

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-2251

ORIGINAL

United States Court of Appeals

For the Second Circuit.

STEPHEN D. MADDALONI,

*Plaintiff-Appellant,*

LONG ISLAND RAIL ROAD, W. L. SCHLAGER, JR., LOCAL 808,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF-  
FEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,  
M. GREENE and JOHN MAHONEY,

*Defendants-Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK.

APPENDIX.

ALFRED F. KOLLER, JR.,

*Attorney for Plaintiff-Appellant,*

845 Third Avenue,

New York, N. Y. 10022

PL 3-8756.

GEORGE M. ONKEN,

*Attorney for Defendants-Appellees, Long Island*

*Rail Road and Walter L. Schlager, Jr.,*

Jamaica Station,

Jamaica, N. Y. 11435

JA 6-0900.

HASKELL L. WOLF,

*Attorney for Defendants-Appellees, Local 808,*

*International Brotherhood of Teamsters,*

*Chauffeurs, Warehousemen and Helpers of*

*America, M. Greene and John Mahoney,*

62-17 Northern Boulevard,

Woodside, N. Y. 11377

274-0254.



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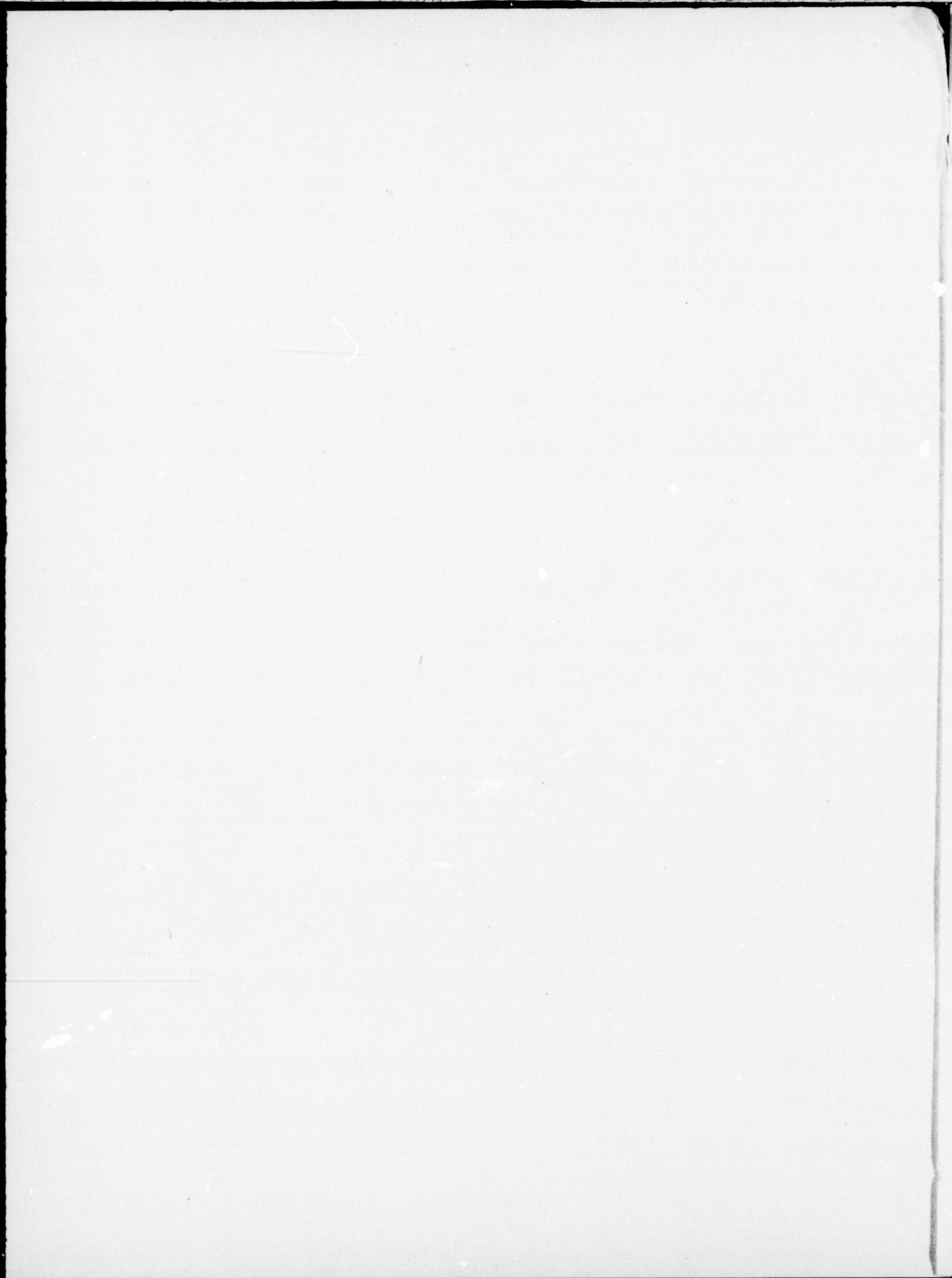
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DOCKET ENTRIES



2  
GENERAL DOCKET  
UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

APPEAL FROM  EASTERN DISTRICT	CASE NO.  74- 2251
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TITLE OF CASE	ATTORNEYS FOR APPELLANT
<p>STEPHEN D. MADDALONI,</p> <p style="text-align: center;">Plaintiff-Appellant,</p> <p style="text-align: center;">v.</p> <p>LONG ISLAND RAILROAD, W.L. SCHLAGER, JR., LOCAL 808 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN and HELPERS OF AMERICA, M. GREENE and JOHN MAHONEY,</p> <p style="text-align: center;">Defendants-Appellees.</p>	<p>Alfred F. Koller, Jr., Esq. 845 Third Avenue New York, N.Y. 10022 (PL 3-8756)</p>
	ATTORNEYS FOR APPELLEE
	<p>George M. Onken, Esq. Jamaica Station Jamaica, N.Y. 11435 (JA 6-0900) (LI RR &amp; W.L. Schlager)</p> <p>Haskell L. Wolf, Esq. 600 Old Country Road Garden City, N.Y. 11530 (274-02 (Local 808; M. Greene &amp; J. Mahoney)</p>

1-16-74  
No. BELOW: 74 C 81  
JUDGE BELOW: J. Doelling  
DATE OF JUDGMENT: 5-15-74  
NOTICE OF APPEAL FILED: 6-10-74

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
Sept. 24 '74	Action Docketed	\$50 00		
9-27-74	Dep acct 100869 (4702) CD# 51		50 00	

GENERAL DOCKET  
UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

CASE NO. 74- 2251

Stephen D. Maddaloni v. Long Island Railroad, et al.

DATE	FILINGS—PROCEEDINGS	Filed
6-11-74	Filed copies of docket entries and notice of appeal	
9-20-74	Filed order extending time to file Forms C & D and to docket the appeal to 9-21-74 } (on consent)	
9-20-74	Alfred F. Koller, Esq. filed Form C	
9-20-74	Alfred F. Koller, Esq. filed Form D with proof of service	
9-24-74	Filed affidavit in support of stipulation for an extension of time to file Forms C & D, etc. -by mail	
9-24-74	Received docket fee -by mail	
9-25-74	Filed order noting Alfred F. Koller, Esq. is counsel for appellant, Stephen D. Maddaloni; record by 10-15-74; w/dismissal in default; appellant's briefs and appendices by 11-14-74; w/dismissal in default; appellee's briefs by 12-16-74; argument week of 3-10-75	
10-15-74	Filed record (original papers of district court)	



## COMPLAINT

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK  
-----

STEPHEN D. MADDALONI,

Plaintiff,

- against -

LONG ISLAND RAILROAD, W.L. SCHLAGER, JR.,  
LOCAL 808 INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFERS, WAREHOUSEMEN and  
HELPERS OF AMERICA, M. GREENE and JOHN  
MAHONEY,

Defendants.  
-----

COMPLAINT

CIV.

74 C 81

Plaintiff, through his attorneys, AUGELLO, DEEGAN &  
PEZOLD, P.C., alleges as and for his complaint against  
defendants:

AS AND FOR A FIRST CAUSE OF ACTION  
AGAINST DEFENDANTS, LONG ISLAND  
RAILROAD and W.L. SCHLAGER, JR.:

FIRST: This cause of action arises under 45 U.S.C.A.,  
Section 151, et sec.

SECOND: Plaintiff was at all times during the two  
and one-half year period immediately preceding October 31,  
1972, an employee of the Long Island Railroad, (hereafter  
referred to as Railroad) serving as a railroad policeman.

THIRD: Plaintiff's employment with Railroad brings  
this action within the purview of the Railway Labor Act, 45  
U.S.C.A. Section 151, et sec.

## COMPLAINT

FOURTH: On or about the 31st day of October, 1972, defendant, Long Island Railroad, did wrongfully and maliciously terminate plaintiff's employment in violation of rights and obligations established by law, custom and contract.

FIFTH: Plaintiff sought a redress of his grievances through the administrative procedures provided for by the Constitution of the United States, the Railway Labor Act, 45 U.S.C.A. Section 151, et sec., and by contract.

SIXTH: Railroad, in an effort to deprive plaintiff of the rights granted him by the Constitution of the United States of America, by law and by contract, conducted and participated in the aforementioned administrative hearings in such a manner as to grossly and unfairly prejudice plaintiff and to cause plaintiff injury.

SEVENTH: Instances of such grossly unfair acts on the part of the Railroad include, but are not limited to, failure of Railroad to notify plaintiff of hearings; having the same employees conduct hearings and sit in judgment thereon that took the initial action complained against plaintiff; undue harrassment of plaintiff in the course of his employment.



## COMPLAINT

EIGHTH: By reason of the aforementioned wanton and malicious acts on the part of Railroad and its president, W.L. Schlager, Jr., plaintiff was deprived of his livelihood and suffered damages calculated to be not less than \$250,000.00.

AS AND FOR A SECOND CAUSE OF ACTION  
AGAINST DEFENDANTS LOCAL 808 INTER-  
NATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFERS, WAREHOUSEMEN and HELPERS  
OF AMERICA, M. GREENE and JOHN  
MAHONEY:

NINTH: Plaintiff repeats, reiterates and realleges each and every allegation of this complaint hereinbefore designated "FIRST" through "EIGHTH" inclusive, with the same force and effect as if here again at length set forth.

TENTH: Plaintiff was at all times during his employment with the Railroad, a member of Local 808 International [sic.] Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America. (Hereafter referred to as Local)

ELEVENTH: Local and its agents, M. Greene and John Mahoney, undertook to represent plaintiff in a departmental trial held by the Railroad to review the action of the Railroad in terminating the employment of plaintiff.

TWELFTH: Local and its agents, M. Greene and John

## COMPLAINT

Mahoney, undertook to represent plaintiff at the arbitration held pursuant to the Railway Labor Act, 45 U.S.C.A. Section 151, et sec.

THIRTEENTH: The representation mentioned in the two preceding paragraphs was without the request or concurrence of plaintiff.

FOURTEENTH: Plaintiff was at no time advised of his right to outside counsel.

FIFTEENTH: Plaintiff was inadequately, improperly, negligently and wrongfully represented by Local in the aforementioned departmental trial and the arbitration.

SIXTEENTH: Plaintiff was not given notice of nor an opportunity to appear at the aforementioned arbitration, notwithstanding his written request to Local for such notice and opportunity.

SEVENTEENTH: By reason of the aforementioned wanton and negligent representation of plaintiff at the aforementioned departmental trial and arbitration, plaintiff has suffered a loss calculated to be not less than \$250,000.00.

AS AND FOR A THIRD CAUSE OF  
ACTION AGAINST ALL DEFENDANTS:



## COMPLAINT

EIGHTEENTH: Plaintiff repeats, reiterates and re-alleges each and every allegation of this complaint hereinbefore designated "FIRST" through "SEVENTEENTH" inclusive, with the same force and effect as if here again at length set forth.

NINETEENTH: Defendants, Railroad and Local, in an effort to deprive plaintiff of rights granted him by law and by contract, did conspire and surreptitiously work together to cause injury to plaintiff.

TWENTIETH: The aforementioned conspiracy extended over a substantial period of time and involved not only this plaintiff but other individual employees of Railroad who were members of Local.

TWENTY-FIRST: By reason of the aforementioned conspiracy, plaintiff has substantial injuries calculated to be not less than \$250,000.00.

WHEREFORE, Plaintiff demands judgment in plaintiff's favor and against the defendants, Railroad and W.L. Schlager, Jr., in the amount of \$250,000.00 on the First Cause of Action herein; plaintiff demands judgment in plaintiff's favor and against defendants, Local 808 International Brotherhood of Teamsters, Chauffers, Warehousemen and

## COMPLAINT

Helpers of America, M. Greene and John Mahoney, in the amount of \$250,000.00 on the Second Cause of Action; plaintiff demands judgment in plaintiff's favor and against all defendants in the amount of \$250,000.00 on the Third Cause of Action; plaintiff demands judgment in plaintiff's favor and against defendant, Railroad, ordering Railroad to reinstate plaintiff to the position formally held, with back pay, plus any increments that would have inured to plaintiff since the termination of his employment; a judgment in plaintiff's favor and against defendant, Railroad, requiring defendant, Railroad, to purge its personnel record of plaintiff of all reference to the termination of plaintiff's employment, and the grounds therefor; an injunction against the Long Island Railroad, ordered them to cease their continued harrassment of the plaintiff in the performance of his duties; and such other and just relief as to this Court may seem proper under the circumstances.

Yours, etc.

AUGELLO, DEEGAN & PEZOLD, P.C.

BY: \_\_\_\_\_

GEORGE C. PEZOLD,  
a member of the firm



COMPLAINT

TO: Long Island Railroad  
W.L. Schlager, Jr.  
Local 808 International Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and Helpers of America  
M. Greene  
John Mahoney

ANSWER OF DEFENDANT, RAILROAD

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----  
STEPHEN D. MADDALONI,

Plaintiff,

ANSWER

- against -

74 C 81

LONG ISLAND RAILROAD, W.L. SCHLAGER, JR.  
LOCAL 808 INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFERS, WAREHOUSEMEN and  
HELPERS OF AMERICA, M. GREENE and JOHN  
MAHONEY,

Defendants.  
-----

Defendants, The Long Island Railroad Company  
(sued herein as Long Island Railroad) and Walter L.  
Schlager, Jr. (sued herein as W.L. Schlager, Jr.),  
answering the Complaint herein:

1. Neither admit nor deny the conclusion of  
law alleged in paragraphs numbered "FIRST" and "THIRD"  
of the complaint.

2. Admit each and every allegation con-  
tained in paragraphs numbered "SECOND," "FIFTH,"  
"TENTH," "ELEVENTH" and "TWELFTH" of the complaint  
herein.

3. Deny each and every allegation contained  
in paragraphs numbered "FOURTH," "SIXTH," "SEVENTH,"  
"EIGHTH," "THIRTEENTH," "FOURTEENTH," "FIFTEENTH,"  
"SIXTEENTH," "SEVENTEENTH," "NINETEENTH," "TWENTIETH,"



ANSWER OF DEFENDANT, RAILROAD

and "TWENTY-FIRST" of the complaint herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4. The Federal District Court is without subject matter jurisdiction to hear the issue of complainant's dismissal which has already been decided by an arbitrator whose decision, pursuant to contract and the Railway Labor Act, is final and binding upon all parties.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5. Plaintiff is collaterally estopped from relitigating the issue of his dismissal before the District Court, since the issue has been previously litigated before a Railroad Adjustment Board, whose decision, pursuant to contract and the Railway Labor Act, is final and binding upon all parties.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

6. The complaint fails to state a claim upon which relief can be granted.

WHEREFORE, defendants demand judgment in defendant's favor dismissing plaintiff's complaint together with costs and disbursements herein.

ANSWER OF DEFENDANT, RAILROAD

GEORGE M. ONKEN  
Attorney for The Long Island  
Rail Road Company and  
Walter L. Schlager, Jr.  
Jamaica Station  
Jamaica, New York 11435

TO: AUGELLO, DEEGAN & PEZOLD, P.C.  
120 Main Street  
Huntington, New York 11743

HASKELL WOLF, ESQ.  
600 Old Country Road  
Garden City, New York



## ANSWER OF DEFENDANT, LOCAL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- x  
STEPHEN D. MADDALONI,

Plaintiff,

-against-

LONG ISLAND RAILROAD, W. L. SCHLAGER,  
JR. LOCAL 808 INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN  
and HELPERS OF AMERICA, M. GREENE and  
JOHN MAHONEY,

Defendants.

ANSWER

74 C 81

----- x  
Defendants, Local 808, International Brotherhood of  
Teamsters, Chauffeurs, Warehousemen and Helpers of  
America, Martin Greene, (sued herein as M. Greene) and  
John Mahoney, in answer to the complaint herein, respect-  
fully alleges:

1. Neither admit nor deny the conclusion of law al-  
leged in paragraphs numbered "FIRST" and "THIRD" of  
Plaintiff's complaint herein.

2. Admit each and every allegation contained in  
paragraphs numbered "SECOND", "FIFTH", "TENTH",  
"ELEVENTH", and "TWELFTH", of Plaintiff's complaint  
herein.

ANSWER OF DEFENDANT, LOCAL

3. Deny each and every allegation set forth in paragraphs numbered "FOURTH", "SIXTH", "SEVENTH", "EIGHTH", "THIRTEENTH", "FOURTEENTH", "FIFTEENTH", "SIXTEENTH", "SEVENTEENTH", "NINETEENTH", "TWENTIETH", and "TWENTY-FIRST" of the Plaintiff's complaint herein.

AS AND FOR A FIRST SEPARATE AND  
DISTINCT DEFENSE

4. The Court has no jurisdiction of the subject matter set forth in the complaint herein.

AS AND FOR A SECOND SEPARATE AND  
DISTINCT DEFENSE

5. The complaint herein fails to state a claim upon which relief can be granted.

WHEREFORE, defendants demand judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: March 13, 1974  
New York, New York

HASKELL WOLF

Attorney for Defendants  
Local 808, I. B. T.  
Martin Greene & John Mahoney



ANSWER OF DEFENDANT, LOCAL

600 Old Country Road  
Garden City, N.Y. 11530  
(212) 274-0254

TO: AUGELLO, DEEGAN & PEZOLD, P.C.  
120 Main Street  
Huntington, New York 11743

ALFRED KOLLER, ESQ.  
845 Third Avenue  
New York, New York 10022

GEORGE M. ONKEN, ESQ.  
Jamaica Station  
Jamaica, New York 11435

NOTICE OF MOTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

STEPHEN D. MADDALONI,

Plaintiff,

Civil Action  
No. 74 C. 81

- against -

NOTICE OF  
MOTION

LONG ISLAND RAILROAD, W.L. SCHLAGER, JR.,  
LOCAL 808 INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFERS, WAREHOUSEMEN and  
HELPERS OF AMERICA, M. GREENE and  
JOHN MAHONEY,

Defendants.

S I R S :

PLEASE TAKE NOTICE that, upon the complaint herein and the annexed affidavits of John J. Ward, Harry C. Cook and Martin S. Greene, sworn to the 13th day of March, 1974, the undersigned will move this court at the courthouse located at 225 Cadman Plaza East, City of New York, County of Kings, before the Honorable John F. Dooling, Jr., on March 29, 1974 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order granting summary judgment for the defendants.

Dated: Jamaica, New York  
March 13, 1974

Yours, etc.

GEORGE M. ONKEN  
Attorney for Defendants, The  
Long Island Railroad Company  
and W.L. Schlager, Jr.  
Jamaica Station  
Jamaica, New York 11435



NOTICE OF MOTION

HASKELL WOLFE  
Attorney for Local 808 Inter-  
national Brotherhood of  
Teamsters, etc.  
M. Greene and John Mahoney  
600 Old Country Road  
Garden City, New York 11530

TO: AUGELLO, DEEGAN &  
PEZOLD, P.C.  
120 Main Street  
Huntington, New York 11743

AFFIDAVIT OF WARD IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

STEPHEN D. MADDALONI,  
Plaintiff,

Civil Action  
No. 74 C 81

AFFIDAVIT

-against-

LONG ISLAND RAILROAD, W.L. SCHLAGER, JR.,  
LOCAL 808 INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFERS, WAREHOUSEMENT and  
HELPERS OF AMERICA, M. GREENE and JOHN  
MAHONEY,

Defendants.

STATE OF NEW YORK)  
: ss.:  
COUNTY OF QUEENS )

JOHN J. WARD, being duly sworn, says:

I am the Manager-Labor Relations of The Long Island Rail Road Company, one of the above-named defendants. I have personal knowledge of the matters hereinafter referred to except where indicated to be upon information and belief and such facts have been obtained from the official records and files of the defendant Long Island Rail Road Company (hereinafter LIRR) which are maintained under my supervision and jurisdiction. I make this affidavit in support of defendants' motion for summary judgment in favor of the defendants.



## AFFIDAVIT OF WARD IN SUPPORT OF MOTION

Upon information and belief that on May 18, 1972, while assigned to "B" Tour (3:59 p.m. to 11:59 p.m.) at Flatbush Avenue Station, Brooklyn, N.Y., Maddaloni was observed talking with a young woman for a period of about five minutes by two of his superior officers, Sergeant Matthaei and Captain Nelson. Sergeant Matthaei instructed plaintiff that he should not engage in conversation with anyone unnecessarily while on duty.

While on scene, Maddaloni was instructed to go to the police room and prepare a report of an earlier incident. After plaintiff had left the immediate presence of the two superior officers, the young woman voluntarily informed Sergeant Matthaei that she had missed her train home (to Ronkonkoma) but that "Steve" (Maddaloni) was going to take her home. Thereafter, plaintiff was again seen in company with the young woman.

Subsequently, on return to headquarters, the two superior officers learned that Maddaloni had called the Desk Officer at about 8:25 p.m. and marked off duty alleging that he was sick. At 11:55 p.m., a verification call was placed to Patrolman Maddaloni's home as provided by the "Sick Leave Plan" under the annexed agreement (Exhibit A), which was collectively bargained pursuant to the Railway Labor

## AFFIDAVIT OF WARD IN SUPPORT OF MOTION

Act. A woman, who identified herself as plaintiff's wife, informed the Sergeant that Patrolman Maddaloni had not returned home as of that time.

Plaintiff was subsequently served by letter dated May 25, 1972, (Exhibit B) of the charges against him; namely, violations of the LIRR Police Department Manual of Procedures, Page 11, paragraph 27.0 and Page AR-7, paragraph 32.3 (a copy of the sections of the aforementioned Manual of Procedures is annexed hereto as Exhibit C). A hearing on the foregoing charges was held on June 7, 1972, and a copy of the stenographic minutes of said company trial is annexed hereto and made a part hereof as Exhibit D. As a result of the evidence adduced at such trial on June 7, 1972, Maddaloni was found to be guilty as charged and based upon such finding and review of his entire record of employment, he was assessed discipline of dismissal from service.

An appeal of the decision of dismissal was taken by the Union on Maddaloni's behalf through the normal channels of procedure on the property, which appeal was heard by a duly designated officer of the carrier pursuant to the terms of the collectively bargained agreement and under date of October 26, 1972, the appeal was denied (a copy



## AFFIDAVIT OF WARD IN SUPPORT OF MOTION

of the letter denying the appeal is annexed hereto and made a part hereof as Exhibit E). Despite the fact that the applicable collectively bargained agreement made no specific provision for arbitration of disputes, [sic.] upon Maddaloni's request (annexed hereto as Exhibit F), the matter was referred to an impartial arbitrator pursuant to the provisions of Section 3 of the Railway Labor Act. (45 U.S.C. Section 153(2d) ). The carrier and the union representing Maddaloni subsequently entered into a standard agreement establishing a Special Board of Adjustment pursuant to Section 3 of the Railway Labor Act in regard to the submission of this case to arbitration. A copy of such agreement is annexed hereto and made a part hereof as Exhibit G.

Because of the strike of the non-operating unions against the LIRR during this period, it was impossible to promptly progress the arbitration proceeding, and Maddaloni apparently sought the intervention of Assemblyman Kremer in this matter. A copy of Assemblyman Kremer's letter dated January 26 is annexed hereto and made a part hereof as Exhibit H. The Railroad promptly responded to Assemblyman Kremer and advised him that pursuant to the agreement with the defendant Union, a Special Board of

## AFFIDAVIT OF WARD IN SUPPORT OF MOTION

Adjustment had been created and the matter was being progressed. A copy of the carrier's letter is annexed hereto and made a part hereof as Exhibit I. The Special Board of Adjustment met on May 31, 1973, and heard argument by both sides to the dispute and subsequently, the arbitrator rendered a decision upholding the discharge of Maddaloni from the service of the LIRR. A copy of the arbitrator's decision is annexed hereto as Exhibit J.

The procedure used in the Company trial of Mr. Maddaloni was the full and normal procedure utilized in company trials not only throughout the railroad industry and these industrial trial procedures have been approved by the National Mediation Board and the courts in many prior instances. The trial officer who presided over the Company trial of Mr. Maddaloni merely acted as a presiding officer and received the evidence of record. He did not evaluate the record or make any findings in regard thereto. The decision as to the guilt of Mr. Maddaloni was made by the commanding officer of the uniform patrol division of the LIRR Police Department, Captain H.C. Cook, who is the duly designated officer to perform such function in regard to uniform police officers, and it was also Captain Cook's function to make the initial assessment of discipline,



## AFFIDAVIT OF WARD IN SUPPORT OF MOTION

which he did. The initial charges against Mr. Maddaloni were written up and brought by neither Captain Slattery nor Captain Cook, but rather as shown by the trial record heretofore annexed as Exhibit D by Sergeant Matthaei and Captain Nelson, who were also the witnesses that testified in regard to the charges against Mr. Maddaloni. The formal letter of charges annexed hereto as Exhibit B was merely a ministerial notice sent by Captain Cook in his capacity as commanding officer of the uniform patrol division.

Similarly, the agreement for the creation of a Special Board of Adjustment annexed hereto as Exhibit G is a standard agreement utilized throughout the industry for the progression of such arbitration pursuant to Section 3 of the Railway Labor Act.

---

JOHN J. WARD

Sworn to before me this  
13th day of March, 1974.

---

MARY K. BRUSH

SEAL

## WARD EXHIBIT A

## MEDIATION AGREEMENT

UNITED TRANSPORTATION UNION (T)

and

THE LONG ISLAND RAIL ROAD COMPANY

In settlement of the issues found to exist in Docket No.

E-346 of the National Mediation Board in connection with a Section 6 Notice served on the Carrier by the United Transportation Union (T) on or about July 2, 1968, the parties signatory hereto have this date executed an agreement, copy of which is attached hereto and made a part hereof, which supersedes and cancels the temporary understanding entered into by the Carrier and the Organization under date of June 4, 1969.

It is understood that a Section 6 Notice served on the Organization by the Carrier on or about August 1, 1968, is not disposed of by this agreement, but that the contents of such Notice shall be further handled in accordance with the provisions of Attachment "B" of the attached Agreement.

In the event that the Carrier's Notice is not disposed of pursuant to and in accordance with Attachment "B" to the attached Agreement, the Carrier shall have the right to promulgate its Notice in whole or in part. In the event the Carrier does in fact promulgate its rules in whole or in part, the Organization shall be free to exercise its right to withdraw from service.

Signed at Garden City, New York, this 3rd day of July 1969.

FOR THE UNITED TRANSPORTATION UNION (T)

FOR THE LONG ISLAND RAIL ROAD  
COMPANY

H. J. Pryor, General Chairman

A. T. Van Wart, Vice President-  
Personnel Relations

APPROVED FOR THE NATIONAL MEDIATION BOARD:

F. A. O'Neill, Jr., Chairman



## WARD EXHIBIT A

Agreement by and between the Long Island Rail Road Company and its train service employees; police employees below the rank of captain; special service attendants, club car porters, represented by the United Transportation Union (Brotherhood of Railroad Trainmen). ;

IT IS MUTUALLY AGREED:

ARTICLE I - RATES OF PAY

Effective October 1, 1968, the basic rates of pay for all employees covered by this agreement shall be increased by an amount equal to eight (8) per cent.

ARTICLE II - HEALTH AND WELFARE

Effective October 1, 1968, the sum of five (5) dollars will be added to the amount presently contributed to the United Transportation Union (Brotherhood of Railroad Trainmen) Health and Welfare Fund for each employee covered by this agreement who renders compensated service in each month.

Effective January 1, 1969, for each day an employee performs compensated service, an amount equal to two (2) per cent of the basic rates of pay will be contributed to the United Transportation Union (Brotherhood of Railroad Trainmen) Health and Welfare Fund.

The amount resulting from the foregoing percentage contribution shall not be used as a factor in computing any wage increases which may hereafter be negotiated between the parties.

ARTICLE III - SICK LEAVE ALLOWANCE PROGRAM

Effective January 1, 1970, employees subject to this agreement will be covered by the sick leave agreement annexed hereto as "Attachment A."

## WARD EXHIBIT A

ARTICLE IV - RULES STUDY AND EMPLOYE PROTECTION

Pursuant to the findings of Presidential Emergency Board No. 173 and the Memorandum of Understanding dated June 4, 1969, annexed hereto as "Attachment B," which resulted in the establishment of Special Board of Adjustment No. 756, (Board of Inquiry), the parties under the auspices of such board will undertake a comprehensive study of the demands encompassed in Carrier's Section 6 Notice dated August 1, 1968.

In order to facilitate and expedite the work of the Board, the parties will establish a Work Rules Cost Committee to be composed of an equal number of Carrier and employee representatives, exclusive of clerical assistance. Members of the Committee are to be designated by the parties within five days of the date of this agreement, and they will continue to work on the study until the Committee's findings are presented, jointly or individually, to the Board for its determination and recommendations. Co-Chairmen of the Work Rules Cost Committee will be designated by the parties and will be responsible to insure the completion of the study without interruption or delay.

The Committee will examine and record timecard payments to train service employees, exclusive of that portion of timecards covering the first eight (8) hours and overtime worked. The timecards to be reviewed will encompass the period of April 1967 to March 1969, inclusive.

In conjunction with the rules study, the parties are in agreement that:

- (1) No job eliminations will take place during and/or until the conclusion of the rules study; and



## WARD EXHIBIT A

(2) At the request of the Carrier, the United Transportation Union (Brotherhood of Railroad Trainmen) will provide for the expeditious transfer of qualified employes from one class of service to another when there is a need therefor to protect the requirements of service.

ARTICLE V - PENSION AND HEALTH AND WELFARE FEASIBILITY STUDY

Pursuant to and as described in letter of understanding annexed hereto as "Attachment C," a study will be undertaken comprehending both pensions and health and welfare benefits.

ARTICLE VI - STARTING RATES FOR NEW EMPLOYES

Employes hired on or after the signing of this agreement will be compensated for service performed as follows:

1st year of service	- 90 per cent of the earnings accruing to them each week.
2nd year of service	- 95 per cent of the earnings accruing to them each week.
3rd year of service	- 100 per cent of the earnings accruing to them each week.

ARTICLE VII - DURATION OF THIS AGREEMENT

Effective with the signing of this agreement, there shall be a moratorium in effect on the serving of any Section 6 notices by either the Organization or the Carrier until on or after December 1, 1970.

ARTICLE VIII - EFFECT OF THIS AGREEMENT

This agreement is in full and final disposition of the Section 6 Notice served on the Carrier by the United Transportation Union (Brotherhood of Railroad Trainmen) on or about July 2, 1968, and the Section 6 Notice served by the Carrier on or about August 2, 1968, except to the extent such portions thereof as are dealt with in



## WARD EXHIBIT A

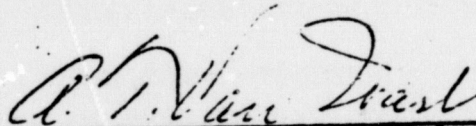
"Attachment B" hereof and the reference thereto in the Mediation Agreement made a part hereof, and shall remain in effect until January 1, 1971, and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

Signed at Garden City, N. Y., this 3rd day of July, 1969.

FOR THE UNITED TRANSPORTATION  
UNION (BROTHERHOOD OF RAILROAD  
TRAINMEN)

  
General Chairman

FOR THE LONG ISLAND RAIL ROAD  
COMPANY

  
Vice President-Personnel Relations

## WARD EXHIBIT -A

"ATTACHMENT A"

Agreement by and between the Long Island Rail Road Company and its train service employees; police employees below the rank of captain; special service attendants, club car porters, represented by the United Transportation Union (Brotherhood of Railroad Trainmen).

IT IS AGREED:

SECTION 1 (a) Subject to the limitations hereinafter set forth, the Carrier will grant to each regularly assigned employee covered by this agreement, who has been in its employ for twelve (12) months or more on the effective date of this agreement, sick leave allowance on each working day when he is unfit for work on account of illness, up to a total in any one year of twelve (12) days.

(b) Employees who, on the effective date of this agreement, have not been in the employ of Carrier for twelve (12) months or more, and employees who are hired subsequent to the effective date of this agreement will be granted sick leave allowance on each working day when they are unfit for work on account of illness, up to a total of one day per each calendar month during which, or the major part of which, the employee shall have been in such employ.

(c) In addition to the sick leave allowance provided in (a) above, Carrier will also establish as of the effective date of this agreement, the following "bank" based on the employee's previous years of service:

Less than 2 years	0 days
2 years but less than 3 years	3 days
3 " " " " 4 "	6 days
4 " " " " 5 "	9 days
5 " " " " 6 "	12 days
6 " " " " 7 "	15 days
7 " " " " 8 "	18 days
8 " " " " 9 "	21 days
9 " " " " 10 "	24 days
10 " " " " 11 "	27 days
11 " " " " 12 "	30 days
12 " " " " 13 "	33 days
13 " " " " 14 "	36 days
14 " " " " 15 "	39 days
15 " " " " 16 "	42 days
16 " " " " 17 "	45 days
17 " " " " 18 "	48 days
18 " " " " 19 "	51 days
19 " " " " 20 "	54 days
20 years and over	60 days



## WARD EXHIBIT A

(d) The sick leave allowance provided in (a) of this section which remains unused at the end of each sick leave year will be added to the employees "bank" on the first day of the next sick leave year.

(e) Employees covered by paragraph (b) of this section shall be allowed to use the sick days earned during their first year of service during either their first or second sick leave year. Credits earned during their second sick leave year may not be used until their third sick leave year. Unused sick leave carried over from their first sick leave year when added to credits earned during the second sick leave year will serve to establish a bank for such employees effective with the beginning of the third sick leave year. Unused sick leave carried over from all years subsequent to the second sick leave year will accrue in accordance with paragraph (d) of this section.

(f) No sick leave credits will be earned or accrued by employees engaged for temporary or seasonal employment; employees hired for summer work, or employees subject to rules governing probationary periods.

(g) No sick leave credits will be applied to an employee's bank during periods covered by leave of absence except where such leaves have been granted for military duty, full or part time union activities or while engaged on official positions with the Carrier.

(h) An employee working on an "extra list" shall be eligible for sick leave allowance hereunder provided that, at the request of the Carrier, the United Transportation Union (Brotherhood of Railroad Trainmen) will provide for the expeditious transfer of qualified employees from one class of service to another where there is a need therefor to protect the requirements of service. In no event will an extra employee after qualifying hereunder be allowed more than 5 days sick leave allowance in his work week.

Employees on extra lists shall be afforded the number of days sick leave allowance provided in Section 1 (a) or (b), whichever is applicable.

**SECTION 2** The term "sick leave year" as used in this agreement, unless otherwise agreed, shall mean a period of 12 months beginning on the first day of January and ending on the 31st day of December.

**SECTION 3** (a) Sick leave allowance granted by this agreement shall be based and paid for at the basic daily rate of pay of the employee's regular assignment in his class of service (eight times hourly rate) and shall not, under any circumstances, include overtime, arbitraries, penalties or any other increment which either regularly accrues to the employee or which may have been earned by another employee during the sick employee's absence should his position be filled. Where applicable, employees on an "extra list" will be paid at the minimum daily rate applicable to the class of service on which last employed prior to period for which claim is made.

## WARD EXHIBIT A

(b) Sick leave allowance will be granted to employees absent from work who are incapacitated by injury received in performance of duty for Carrier and will not be charged against the employee's bank. This section shall be subject to the provisions of Section 6 hereof.

(c) In no one year will an employee be granted more than 60 days' sick leave allowance.

**SECTION 4** (a) Should an employee's scheduled vacation commence after a leave of absence for illness, the vacation shall be cancelled and rescheduled for a later date in accordance with the requirements of the service.

(b) Should an employee who is on vacation become ill, he must continue on his vacation and will not be entitled to any sick leave allowance during such vacation period.

**SECTION 5** (a) No sick leave allowance will be paid for during the first seven (7) days of each absence account sickness, nor will sick leave allowance be made in the following cases:

1. Employees attaining compulsory retirement age in accordance with existing agreements.
2. Absences due to indulgence in alcoholics or narcotics.
3. Absences due to pregnancy.
4. Absences due to any form of public misbehavior in which employee is found guilty as a result of civil action.

(b) No sick leave allowance will be paid for time taken to visit chiropractors unless referral is made by a medical doctor or jointly agreed between the United Transportation Union (Brotherhood of Railroad Trainmen) and Carrier representatives.

(c) No sick leave allowance will be granted to employees on their relief days but will be granted on holidays for which charge will be made against their banks. If paid for holiday under the existing agreement, no payment will be made under this sick leave agreement.

(d) No sick leave allowance will be granted to an employee who is unfit for work on account of an accident incurred while working for an employer other than the Carrier.

(e) No sick leave allowance will be paid for absences of less than one full day.



## WARD EXHIBIT A

**SECTION 6** In the event an employee initiates any action or proceeding against carrier, or any individual or Insurance Carrier, on the basis of any alleged injury received in an off duty accident or in the performance of duty for which sick leave allowance hereunder has been paid by this Company the Carrier shall have a lien against and is entitled to be reimbursed or to deduct from any recovery or settlement resulting from such action or proceeding up to the extent of the benefits so paid.

**SECTION 7** (a) In addition to the sick leave allowance provided in Section 1 hereof, and after the employee's bank and vacation time, if any, is exhausted the following additional sick leave shall be provided at sixty (60) percent of the employee's basic daily rate as specified in Section 3 (a), hereof:

Additional Days Per Sick  
Leave Year

Employees with less than 4 years of service at the beginning of the sick leave year	0
Employees with service from 4 years up to but not including 8 years at the beginning of the sick leave year	10
Employees with service from 8 years up to but not including 14 years at the beginning of the sick leave year	20
Employees with service from 14 years up to but not including 20 years at the beginning of the sick leave year	40
Employees with 20 years or more of service at the beginning of the sick leave year	60

(b) The supplemental sick leave allowances provided in this section shall not be accumulated from year to year but shall be available to the covered employees in each year until such days have been exhausted within the individual's particular service group. Once the employee exhausts the supplemental sick leave benefits within his particular service group he will not be eligible for further supplemental benefits until he becomes part of the next service group by virtue of additional years of service.

(c) To be eligible to receive the supplemental sick leave allowance provided herein, during any sick leave year the employee must be eligible for an allowance of 12 days of sick leave in said sick leave year under Section 1 hereof.

**SECTION 8** (a) The burden of establishing that he was actually unfit for work because of illness shall be upon the employee. Every application for sick leave, whether with or without pay, must be accompanied by medical proof satisfactory to the Carrier and upon a form to be furnished by the Carrier, setting forth the nature of the employee's illness and certifying that by reason of such illness the employee was unable to perform his duties for the period of absence.

## WARD EXHIBIT A

(b) The application form must be submitted to the Carrier through the applicant's appropriate superior within three days following the employee's return to work. In cases of prolonged illness the form may be filed during the period of absence.

(c) To be entitled to sick leave for any day on which he is absent from work because of illness, an employee, except where it is impossible to do so, must, at least two hours before the commencement of his scheduled tour of duty for that day, cause notice of the illness and the place and telephone number where he can be found during such illness, to be given by telephone, messenger, or otherwise, to his appropriate superior and must also give notice to such superior of any subsequent change in the place where he can be found. Where it is impossible to give such notice within the time prescribed herein, it shall be given as soon as circumstances permit. Failure to cause such notice to be given shall deprive the employee of his right to count such day as one of the seven (7) days referred to in Section 5 (a) hereof or to be paid for such tour of duty, whichever is applicable, and he shall not be entitled to pay for any subsequent tour of duty from which he absents himself unless at some time, not less than two hours prior to the commencement of such tour of duty, he shall have caused such notice to be given. Failure to cause such notice to be given as herein provided shall not be excused unless the Carrier is convinced that special circumstances made it impossible and is also convinced that notice was given as soon as the special circumstances permitted.

(d) Carrier reserves the right to investigate any or all employees calling off account sickness by telephone or other means available to Carrier. If a representative of the Carrier calls by telephone, or in person, at the place where the absent employee advised, under paragraph (c) hereof, that he could be found and cannot contact him, the absent employee will be subsequently advised by certified mail of Carrier's inability to contact him and he will be deemed to be absent without leave unless he can, within seven (7) calendar days from date of the letter's certification, prove to Carrier's satisfaction that he was unable to respond to such inquiry. Unless such employee complies with these provisions he will not be granted sick leave and will be subject to appropriate disciplinary action in accordance with the provisions of the existing agreement.

SECTION 9 (a) Where an employee is entitled to benefits under the Railroad Retirement Act for absences due to illness or injury, credit will be taken by the Carrier for such benefits and only the difference between the Railroad Retirement benefits and the basic daily rate of the employee's assignment will be allowed.

(b) It shall be incumbent upon the employee to apply for Railroad Retirement sickness benefits and Carrier will assume in all instances that such application has been made.

SECTION 10 An employee found to be in violation of the rules governing sick leave allowance shall, in addition to being subject to denial of sick leave, also be subject to appropriate disciplinary action in accordance with the existing agreement. Any serious violation, or persistent infractions, or fraudulent claim for sick leave



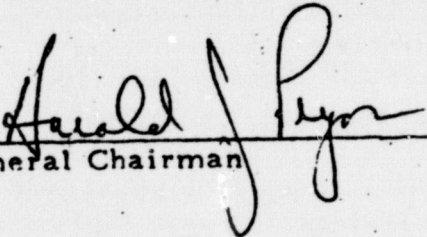
## WARD EXHIBIT A

may result in dismissal from the service in accordance with provisions of the existing agreement.

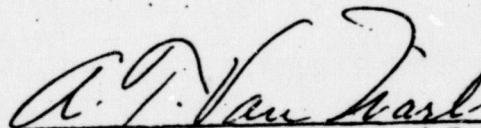
SECTION 11 This agreement shall terminate automatically on the effective date of a change in the duly accredited representative under the Railway Labor Act.

SECTION 12 Except as otherwise provided herein, this agreement and each of its provisions, provided they are not in violation of law as determined by a court of competent jurisdiction, shall be effective as of January 1, 1970, and thereafter unless changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

FOR UNITED TRANSPORTATION UNION  
(BROTHERHOOD OF RAILROAD TRAINMEN)

  
General Chairman

FOR THE LONG ISLAND RAIL ROAD  
COMPANY

  
Vice President-Personnel Relations

Garden City, N. Y.  
July 3, 1969

MEMORANDUM OF UNDERSTANDING

In the negotiations and mediation which led to the agreements effective May 29, 1969, the National Mediation Board suggested, and the parties agreed as a measure of good faith, to the creation of a Special Board of Inquiry consisting of three members to hear, make recommendations and report to the National Mediation Board.

In its report dated April 21, 1969, Emergency Board No. 173, among other things, said:

"The Board suggests to the parties that a Joint Committee be established composed of an equal number of representatives from each side to review the current work rules agreements, particularly those rules encompassed in the Carrier's Section 6 notice. The Board further suggests that the proposed committee be required to recommend rules changes to the parties based upon its study within a period of six months from the date of its establishment.

"Moreover, an additional wage adjustment should be negotiated by the parties during the term of any new collective bargaining agreement to reflect an equitable distribution of all savings that can be anticipated from the abolition or change of existing work rules made pursuant to recommendations of the Joint Committee."

The parties have agreed to adopt said suggestion and have further agreed that in the interest of expedition and in furtherance of a good faith effort to resolve the problems outlined above, that a third neutral person should assist the Joint Committee in its study of the work rules.

The Special Board of Inquiry shall consist of three members, one appointed by the Company, one appointed by the Union, and the third to be appointed by the National Mediation Board.

The Special Board of Inquiry shall be established no later than June 15, 1969. It shall convene as soon as possible. The expenses in connection with the operation of the Special Board of Inquiry, including cost of hearings and travel, shall be borne



## WARD EXHIBIT A


ually by the parties except that the salary and expenses of the neutral will be paid  
accordance with the government travel regulations by the National Mediation Board.

The Special Board of Inquiry shall investigate and make recommendations on the  
following:

The circumstances and reasons surrounding the Carrier's proposal  
dated August 1, 1968, and, in addition to noting the positions and background  
data as advanced by both parties, the Special Board of Inquiry may entertain  
suggested solutions, either its own or those suggested by either party.

Recommendations made by the Special Board of Inquiry should attempt to  
solve the existing differences and problems and shall be considered in terms  
of being to the mutual benefit of both parties. Recommendations submitted  
by the Special Board of Inquiry shall not be binding on either party.

Agreed to this date: June 4, 1969

  
General Chairman  
United Transportation Union  
Formerly Brotherhood of Railroad  
Trainmen)

  
Vice President-Personnel Relations  
The Long Island Rail Road Company

APPROVED:

  
Mediator, National Mediation Board

## WARD EXHIBIT A

## THE LONG ISLAND RAIL ROAD COMPANY

Jamaica, N. Y., July 2, 1969

Mr. H. J. Pryor, General Chairman  
United Transportation Union  
647 Franklin Avenue  
Garden City, New York 11530

Dear Mr. Pryor:

Referring to our discussions on the subject of a pension feasibility study, and pursuant to the opinion of Presidential Emergency Board No. 173 as set forth on Pages 26, 27 and 28 of its Report dated April 21, 1969, the Carrier will contact Martin E. Segal Company, a leading pension and actuarial consultant, to commence a study on or about October 1, 1969. The Carrier will urge said company to complete the study not later than March 1, 1970.

The study will embody a review of the health and welfare benefits currently available on the Long Island Rail Road and compare them with those of certain employees of political sub-divisions and public corporations in the State of New York. In this connection, it must be recognized and acknowledged that there must be an extensive and concentrated study of the complex questions of law and economics involved in order to permit all parties a basis for proper and intelligent appraisal.

While the findings of the Segal Company will not be binding on the parties, the Carrier will approach these findings in good faith. However, it is essential that your Organization and, to the extent possible, all other Organizations cooperate with the Carrier in working out all necessary details incidental to the proper resolution of the goals sought.

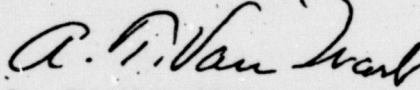
As concerns all the other Organizations authorized to represent our employees, the Carrier will contact them to seek their cooperation in the study.



## WARD EXHIBIT A

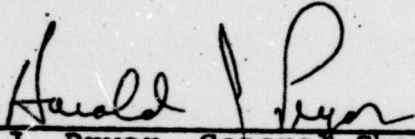
Please confirm your acceptance of this understanding by affixing your signature in the space provided below.

Yours very truly,



A. T. Van Wart  
Vice President-Personnel Relations

ACCEPTED:



H. J. Pryor, General Chairman  
United Transportation Union

## WARD EXHIBIT A

AGREEMENT  
 ENTERED INTO BY AND BETWEEN  
 THE LONG ISLAND RAIL ROAD COMPANY  
 AND  
 POLICE OFFICERS BELOW THE RANK OF CAPTAIN  
 EMPLOYES OF THE AFORESAID COMPANY  
 REPRESENTED BY THE  
 BROTHERHOOD OF RAILROAD TRAINMEN

SCOPE

The provisions herein set forth in this Agreement shall constitute an Agreement between The Long Island Rail Road Company and Police Officers below the rank of Captain, represented by the Brotherhood of Railroad Trainmen, and shall govern the hours of service, working conditions and rates of pay of the respective positions and employees classified herein.

DEFINITIONS

**Definition** The term "Police Officers below the rank of Captain" as used in this Agreement shall include Lieutenants, Sergeants and Patrolmen, employees working as relief Patrolmen and extra Patrolmen.

The term "duly accredited representative" as used in this Agreement, unless otherwise specifically designated, shall be understood to mean the regularly constituted Committee, or any Member or Members thereof, or an Officer of the Organization signatory hereto.

RULE NO. 1 - PROMOTION

**Consideration for** 1-A-1 (a) Employees shall be given consideration for promotion as the opportunity may offer.

(b) Promotion to the rank of Lieutenant and/or Sergeant shall be by competitive written examination and will also be based on ability to plan, lead, direct, regulate and coordinate the work of patrolmen. In the event of identical scoring on the written examination, the senior patrolman shall be appointed to the position of Lieutenant and/or Sergeant. The written examination shall be conducted jointly by a representative of the Carrier and the Brotherhood.

(c) Eligibility for participation in examinations will be restricted to patrolmen with a minimum of five (5) years of service in the Long Island Rail Road Police Department.

RULE NO. 2 - SELECTION OF POSITION

**Qualifications for** 2-A-1 (a) Except as otherwise provided in paragraph (b) of this Rule (2-A-1), assignments to advertised positions in the respective classes specified in Rule



## WARD EXHIBIT A

3-A-1 (a) shall be based on ability, fitness and seniority, and fitness being sufficient, seniority shall govern.

positions in (b) New positions and vacancies in the office of the Chief of Police or in the office of the Captain of Police comprising Desk Duty or Office Duty, shall be subject to all the advertising and displacement rules of the schedule Agreement. Applicants for these positions must have three (3) or more years' service in the Long Island Rail Road Police Department and possess the following qualifications:

Patrolman (Desk)

1. Must be thoroughly familiar with the organizational structure, functions and responsibilities of the office of the Chief of Police and the Captain of Police.
2. Must have a general knowledge of the physical territories, duties and responsibilities of all patrolman assignments.
3. Must have a thorough knowledge of the Rules for the Government of Long Island Rail Road Police Department Employees and Instruction Manual for Long Island Rail Road Police Department Employees.

Patrolman (Office)

1. Same as above (1, 2 and 3).
4. Must have a working knowledge of the schedule Rules and Working Conditions Agreement.

investiga- (c) New positions and vacancies comprising investigative duty shall be  
ve Duty filled by appointment and will be based on the employees' ability to conduct investi-  
gations, as well as the manner in which he handles himself in the performance of  
his normal duties. The Superintendent of Transportation and the General Chairman  
shall jointly agree upon such appointees. The rate of pay for Investigative Duty is  
set forth in the rate schedule (\$125.50).

advertise- 2-B-1 (a) Except as otherwise provided in paragraphs (d) and (e) of this Rule  
ent of (2-B-1), permanent new positions and permanent vacancies shall be advertised  
and as- within five (5) days when they occur and shall be advertised for five (5) days follow-  
ignment ing the date the bulletin is posted. A copy of the bulletin will be furnished the  
General Chairman.

temporary (b) Except as otherwise provided in paragraphs (d) and (e) of this Rule  
vacancies (2-B-1), temporary new positions and temporary vacancies shall, when known to  
be of thirty (30) calendar days or more duration, unless a longer period is agreed  
upon, be advertised as such in the same manner as permanent new positions and  
permanent vacancies.

## WARD EXHIBIT A

(c) Temporary positions or vacancies of less than thirty (30) calendar days' duration need not be advertised, except positions at Race Tracks, regardless of duration, will be advertised.

Lieutenants (d) New positions and vacancies in the Lieutenant class shall be advertised to the employees regularly assigned in that class and subject to the provisions of Rule 2-A-1 (a), shall be awarded and assigned within five (5) days after the date on which the advertisement is closed, to the senior lieutenant who has filed written application for the position; and the last regular position left vacant in the Lieutenant class shall be filled in accordance with Rule 1-A-1 (b) and (c).

Sergeants (e) New positions and vacancies in the Sergeant class shall be advertised to employees regularly assigned in that class and subject to the provisions of Rule 2-A-1 (a), shall be awarded and assigned within five (5) days after the date on which the advertisement is closed, to the senior sergeant who has filed written application for the position; and the last regular position left vacant in the Sergeant class shall be filled in accordance with Rule 1-A-1 (b) and (c).

Patrolmen (f) New positions and vacancies in the Patrolman class shall be advertised to the employees regularly assigned in that class and subject to the provisions of Rule 2-A-1 shall be awarded and assigned within five (5) days after the date on which the advertisement is closed, to the senior patrolman who has filed written application for the position.

Bulletining (g) Bulletins advertising positions or vacancies shall show the title of the position, headquarters, tour of duty, assigned territory, days of rest and whether the position or vacancy is of a permanent or temporary nature.

(h) Notice of award and abolishments shall be posted, a copy of such notices will be furnished the General Chairman.

(i) Positions or vacancies of less than thirty (30) calendar days' duration (except positions at Race Tracks) and advertised positions and vacancies pending award and assignment may be filled in accordance with Rule 5-A-2.

When no bids are received 2-B-2 When a vacancy or position is advertised in the Patrolman class and no bids are received from qualified employees, the position or vacancy shall be filled by the assignment of the junior extra employee.

Advertisement of positions vacated 2-B-3 When an employee is awarded an advertised position, his former position shall be declared vacant and shall be advertised. During such advertisement, the application of the said employee for his former position shall be considered only if no bids therefor are received from other qualified employees, or if the said employee has been displaced, by a senior employee in the exercise of seniority, from the position he was awarded.

Failure to qualify for this Agreement 2-B-4 When an employee, who is regularly assigned to a position covered by this Agreement makes application for and is assigned to an advertised position, or obtains a position in the exercise of seniority, or is appointed to a position, and is thereafter removed from such position by reason of his failure to satisfactorily perform the duties of the position, he shall retain his seniority under this Agreement.



## WARD EXHIBIT A

and shall return to his former position unless it has been abolished or permanently filled by a senior employee. If his former position has been abolished or permanently filled by a senior employee he may exercise seniority in accordance with the provisions of Rule 3-F-1.

RULE NO. 3 - SENIORITY

Date of 3-A-1 (a) The following groups of employees shall each constitute a separate Seniority Class:

1. Lieutenants
2. Sergeants
3. Patrolmen

(b) The seniority of an employee who, on the effective date of this Agreement is assigned to a position of lieutenant, sergeant or patrolman and is not covered by paragraph (d) of this Rule (3-A-1), shall date in the class in which employed from the first day on which he is assigned to such position subsequent to the effective date of this Agreement.

(d) An employee who, prior to the effective date of this Agreement, was transferred from one of the classes covered by this Agreement to a position referred to in Rule 3-E-1, or was furloughed from one of the classes covered by this Agreement for Military Service, will have seniority in accordance with the principles of paragraph (b) of this Rule (3-A-1), in the class from which transferred or furloughed and in classes of lower rank.

(e) Temporary service in a higher class shall not establish seniority in that class except when the temporary service is performed as the result of appointment in accordance with Rule 2-B-1 (d) or (e).

(f) Employees temporarily transferred from classes not covered by this Agreement, or employees hired to fill temporary positions or temporary vacancies of less than thirty (30) calendar days' duration shall not acquire seniority rights and their names shall not be shown on the roster.

Extent of 3-B-1 The Long Island Rail Road shall constitute one seniority district.

Roster 3-C-1 (a) A seniority roster of lieutenants, sergeants and patrolmen, compiled by classes, shall be revised as of July 1st of each year and posted as soon as practicable thereafter at a place accessible to all employees. A copy of said roster shall be furnished to the General Chairman.

(b) The names and seniority standing of all employees holding seniority rights under this Agreement, including employees occupying positions below the rank of Captain, shall appear on the seniority roster.

(c) An employee shall have sixty (60) calendar days from the date on which his name first appears on the roster to file a protest with the Superin-

## WARD EXHIBIT A

tendent of Transportation, in writing, against his seniority date or his relative standing as they are shown thereon. In the event that he is absent because of furlough, sickness, disability, or leave of absence, at the time roster is posted, the above time limit of sixty (60) calendar days for filing his protest shall commence on the date such furlough, sickness, disability, or leave of absence ends. If no written protest is filed with the Superintendent of Transportation within the sixty (60) day period, no protest shall be entertained, unless the employee's seniority date or relative standing is changed from that first shown, in which event the employee in question shall be permitted to file a protest within sixty (60) calendar days from the date of change.

(d) An employee likewise shall have sixty (60) calendar days from the date of the posting of a roster to protest the omission or removal of his name from such roster. If no written protest is filed within such sixty (60) day period, the omission or removal of the employee's name shall be deemed to be correct and shall not be subject to further protest. If the employee is absent because of furlough, sickness, disability, or leave of absence at the time the roster is posted, the sixty (60) calendar day period shall commence on the day such furlough, disability, sickness, or leave of absence ends.

(e) A note shall be placed on each roster stating the time limit for filing protest thereto.

(f) An appropriate symbol shall be shown on the roster before the name of each employee absent because of furlough or leave of absence who is retaining and accumulating seniority under this Agreement.

Exercise of  
seniority  
after ab-  
sence

3-D-1 (a) When an employee returns to duty after being absent by reason of sickness, disability, suspension, vacation, or leave of absence, and his former position has not been abolished or permanently filled by a senior employee he shall, within seven (7) days after reporting for duty, have the choice of returning to his former position or of exercising his seniority to any position or vacancy which occurred during his absence. If his former position has been abolished or permanently filled by a senior employee, he shall be entitled to displace a junior employee by the exercise of his seniority.

(b) When an employee is affected as a result of the foregoing paragraph, he shall have the choice of returning to his former position unless it has been abolished or obtained by a senior employee, or may exercise his seniority to any position held by a junior employee.

Supervisory  
or official  
positions.  
Retention of  
seniority

3-E-1 (a) An employee who, prior or subsequent to the effective date of this Agreement, leaves a position covered by this Agreement to accept a position with the Company or its affiliates, which position is a supervisory or official position, shall retain and accumulate seniority under this Agreement, and provided he reports for duty within thirty (30) days after release from such position he may exercise such seniority in accordance with the provisions of Rule 3-F-1.



## WARD EXHIBIT A

Exercise of  
within 7  
days

3-F-1 When an employe becomes entitled to displace another employe by the exercise of his seniority under any of the provisions of this Agreement, he shall, subject to the provisions of Rule 2-A-1, exercise seniority within seven (7) days, or forfeit all his seniority under this Agreement except as provided in Rule 3-D-1, or in cases of personal illness, unavoidable causes, or inability to exercise seniority due to the fact no position is available. In the case of absence due to personal illness or unavoidable causes, the seven (7) day period will be extended proportionately to the extent of such absence. An employe unable to exercise seniority and desiring to protect it, will file his name and address in writing, within five (5) days from the date actually reduced to the furloughed list, and keep his correct address on file with the proper officer of the Company.

Right to  
exercise

3-F-2 Subject to the provisions of Rule 2-A-1 an employe may, within seven (7) days displace a junior employe by the exercise of his seniority in the following cases:

(1) When the permanent position or permanent vacancy to which he is regularly assigned is abolished.

(2) When he returns from a temporary position or temporary vacancy and his former position has been abolished or permanently filled by a senior employe.

(3) When he is actually relieved of the position to which he is regularly assigned by a senior employe exercising his seniority to obtain the position.

(4) When he returns from a position covered by Rule 3-E-1.

(5) When the starting time of his regular assignment is permanently changed one hour or more; provided that this paragraph (5) shall not apply to changes in starting time caused by Wartime or Daylight Saving Time.

(6) When either or both rest days are changed.

(7) When a change is made in the location of the headquarters.

(8) When territorial limits of a post are changed.

Return to  
regular  
position  
from  
temporary  
vacancy

3-G-1 (a) An employe who has been assigned to a temporary position or temporary vacancy under the provisions of Rule 2-B-1 (b), may return to his regular position before the expiration of such temporary position or temporary vacancy, if he has given the Company sufficient notice to permit the re-advertisement and filling of such temporary position or temporary vacancy before he relinquishes it.

(b) An employe who has been assigned to a temporary position of

## WARD EXHIBIT A

temporary vacancy under the provisions of Rule 2-B-1 (b) shall, upon the expiration of such temporary position or vacancy, have the choice of returning to his regular position or of exercising his seniority to any advertised temporary position or temporary vacancy.

(c) If his regular position has been abolished or permanently filled by a senior employee, he shall be entitled to displace a junior employee by the exercise of his seniority, subject to the provisions of Rule 2-A-1.

Leave of  
absence

3-I-1 (a) An employee shall, upon request, be given a leave of absence without impairment of seniority to perform organization work to accept an elective or appointive public office for which a competitive examination is not required, or to accept any appointive public office which is related to railroad work.

(b) When the requirements of the service permit, an employee shall, upon request, be granted a leave of absence for a limited time with the privilege of renewal.

(c) Except as provided in paragraph (a) of this Rule (3-I-1), an employee who, without the special permission of the Superintendent of Transportation, engages in other employment while absent on leave, shall forfeit his seniority under this Agreement and shall cease to be an employee of the Company.

Reduction  
in force

3-J-1 Notice of force reduction shall be posted or given as soon as practicable and not less than forty (40) hours in advance. Employees shall be laid off in the reverse order of their starting seniority regardless of class.

Recall to  
service

3-J-2 When force is increased, employees shall be recalled in the order of their starting seniority regardless of class, provided they have kept their employing officer informed, in writing, of their address. If an employee fails to report for duty within seven (7) days from the date on which a notice to return to service in that class was served upon him, either through notification handed to him or mailed to his last recorded address, he shall forfeit his seniority in the class in which he failed to accept recall. If he presents satisfactory evidence to his employing officer that conditions beyond his control prevented his return to service, the seven (7) day period specified above shall be extended proportionately to the extent of his absence on account of such conditions.

Temporary  
transfers

3-K-1 None of the seniority provisions of this Agreement shall preclude the Company from temporarily transferring employees from one assignment to another, for proper reasons or to assure proper protection of life and property.

3-L-1 Temporary transfer shall not be for more than thirty (30) days, except by agreement, in writing, between the proper officer of the Company and the duly accredited representatives.

Failure to  
obtain po-  
lice com-  
mission

3-M-1 Inability of an employee to obtain the necessary police commission or indemnity bond, or renewal of either, shall automatically disqualify him for service and he shall forfeit his seniority under this Agreement.



## WARD EXHIBIT A

Disabled  
employees-  
placement  
of

3-N-1 (a) Subject to agreement in writing between the proper officer and the General Chairman, a disabled employee covered by this Agreement may be placed in a new position or vacancy that is under advertisement but not yet filled, or in a position occupied by another employee, without regard to seniority, provided such employee is capable of performing the duties required. An employee who is so placed shall be compensated at the rate of the position in which he has been placed.

(b) An employee who has been placed in a position as set forth in paragraph (a) hereof shall remain thereon until agreement covering his placement is terminated.

(c) A position in which a disabled employee has been placed by agreement under paragraph (a) hereof shall not be subject to the seniority or advertising provisions of this Agreement, except that a disabled employee so assigned may be displaced by a senior qualified employee if there is no other position covered by this Agreement to which such senior employee can exercise seniority.

#### RULE NO. 4 - TIME ALLOWANCES

Day's  
work

4-A-1 (a) The normal hours of assignments shall be eight (8) hours per day.

(b) Eight consecutive hours, including twenty (20) minute meal period, without deduction in pay, shall constitute a day's work for employees.

(c) The work week for regularly assigned employees shall not be reduced below five (5) days unless agreed to by the Manager of Personnel and the General Chairman. This Rule does not prohibit the abolition of a position at any time.

Work out-  
side normal  
hours

4-A-2 (a) When a patrolman assigned to Investigative Duty under Rule 2-A-1 (c) is required to perform service outside their normal hours on assigned working days, they shall be compensated therefor by being allowed equivalent time off from their regular assignments as promptly thereafter as it can be arranged, and in any event, not later than ten (10) days following the day on which they perform service outside their normal hours. Any compensating time which is not allowed within the period shall be paid for at the pro rata rate.

Overtime

(b) For employees, other than those set forth in paragraph (a) hereof, time on duty in excess of eight (8) hours will be considered overtime and paid on the actual minute basis, at the rate of time and one-half, except as otherwise provided in paragraphs (c) and (d) of this Rule (4-A-2).

Call rule

(c) A regularly assigned lieutenant, sergeant or patrolman notified or called to perform work, and reporting for such work, between his regular work periods and not continuous therewith, shall be paid on the actual minute basis at the rate of time and one-half with a minimum of two (2) hours and forty (40) minutes at the time and one-half rate, computed from the time he reports for such work.

## WARD EXHIBIT A

(d) A relief patrolman working on two (2) positions covered by his regular assignment, on any day, shall be paid at the pro rata rate for the first eight (8) hours of service on each position. For time worked in excess of eight (8) hours on either position so worked, he shall be paid at the rate of time and one-half.

Basis of  
pay

4-B-1 (a) The weekly rates of pay for employees specified in the Rate Schedule applicable to this Agreement, attached to and made a part of this Agreement, are intended to compensate them for all services which they perform incident to their regular assignments.

(b) The weekly rates of pay for employees specified in the Rate Schedule applicable to this Agreement, attached to and made a part of this Agreement, comprehend five (5) days of work per week.

Rest days

4-D-1 (a) Two (2) regular rest days each week, designated by the Company, shall be assigned to each position covered by this Agreement. Such assigned rest days shall be consecutive to the fullest extent possible. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any Police Officer below the rank of Captain in excess of five (5) days per week.

(b) A patrolman assigned to investigative duty under Rule 2-A-1(c) who is required to work on either or both rest days in the work week of the position to which he is regularly assigned shall be compensated therefor by being allowed equivalent time off from his regular assignment as promptly thereafter as it can be arranged; and in any event, not later than ten (10) days following either or both such rest days on which he performed service. Any compensating time which is not allowed within the period specified shall be paid for at the straight time rate.

(c) A lieutenant, sergeant or patrolman who is required to work on either or both rest days of the position to which he is regularly assigned shall be paid at the rate of time and one-half with a minimum of two (2) hours and forty (40) minutes at the time and one-half rate, for work performed on either or both such rest days.

(d) Extra patrolmen who are required to work as patrolman in excess of five (5) days in any week beginning on Monday, shall be paid one and one-half times the basic straight time rate, with a minimum of two (2) hours and forty (40) minutes at the time and one-half rate, for work on either or both the sixth or seventh days, except as provided in Rule 5-A-2.

(e) Nothing in this Agreement shall require the filling of a position on the rest days of the position.

Beginning  
of work  
week

(g) The term "work week" for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for extra employees shall mean a period of seven (7) consecutive days, starting with Monday.



## WARD EXHIBIT A

Time that  
may be  
utilized  
in comput-  
ing over-  
time

(h) There shall be no overtime on overtime- neither shall time paid for in the nature of arbitraries or special allowances such as attending court, dead-heading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime.

Tour of  
duty begin  
and end

4-E-1 (a) An employee's tour of duty shall begin and end at the same designated headquarters.

(b) The provisions of paragraph (a) of this Rule (4-E-1), shall not apply to an employees assigned to service which does not permit of their return to their headquarters daily. For such employees, the provisions of Rule 4-I-1 (b) shall apply.

Attending  
court or  
inquest

4-F-1 (a) A patrolman assigned to investigative duty under Rule 2-A-1 (c) who is required to attend court or inquest by direction of an officer of the Company on days not assigned to work shall be compensated therefor by being allowed equivalent time off from his regular assignment as promptly thereafter as it can be arranged and, in any event, not less than ten (10) days following the day attending court or inquest. Any compensated time which is not allowed within the period specified shall be paid for at the pro rata rate of pay.

(b) A lieutenant, sergeant or patrolman attending court or inquest by direction of an officer of the Company on days not assigned to work shall be allowed eight (8) hours at the pro rata rate.

(c) A lieutenant, sergeant or patrolman required by an officer of the Company to attend court or inquest at any other than the abovementioned times shall be compensated for the time so engaged with a minimum of three (3) hours at the pro rata rate of pay.

(d) Witness and mileage fees shall be remitted to the Company.

Jury duty

(e) An employee who has been in the employ of the Company one or more years, shall be allowed the difference between what he would have earned had he remained at work, and what he received as jury fees.

Attending  
investiga-  
tion

4-G-1 (a) A lieutenant, sergeant or patrolman required to report for investigation who works immediately before, immediately after or both before and after attending such investigation, shall be allowed continuous time at his regular pro rata rate, unless he is found guilty of the offense involved.

(b) A lieutenant, sergeant or patrolman who is required to attend investigation at other than the times mentioned in paragraph (a) of this Rule (4-G-1), except when under pay, shall be compensated for the time so engaged with a minimum of three (3) hours and a maximum of eight (8) hours at the pro rata rate, unless he is found guilty of the offense involved.

(c) The provisions of this Rule (4-G-1), shall apply to lieutenants, sergeants and patrolmen required to attend trial and also to such employees re-

## WARD EXHIBIT A

quired to attend investigation or trial as witnesses for the Company.

Qualifying  
for an ad-  
vertised  
position

4-H-1 An employee who is awarded an advertised position shall be permitted to qualify on such position, at his own expense, for a period of time to be determined by mutual agreement, in writing, between the Superintendent of Transportation and the duly accredited representative. When an employee fails to qualify within the above period of time, he shall revert to his former position unless his former position has been abolished or permanently filled by a senior employee. If his former position has been abolished or permanently filled by a senior employee, he shall be permitted to exercise his seniority in accordance with the provisions of Rule 3-F-1.

Traveling  
and wait-  
ing time  
outside of  
assigned  
hours

4-I-1 (a) Subject to the provisions of Rule 4-D-1, a lieutenant, sergeant or patrolman performing service which permits him to leave and return to his headquarters the same day shall be paid at the pro rata rate for all traveling and waiting outside of his regularly assigned working hours.

(b) Subject to the provisions of Rule 4-D-1, a lieutenant, sergeant or patrolman performing service which does not permit him to leave and return to his headquarters the same day shall be paid at the pro rata rate with a maximum of eight (8) hours at the pro rata rate for all time actually engaged in traveling or waiting outside his regularly assigned working hours, unless standard sleeping car accommodations or other suitable lodging accommodations are available for his use for at least eight (8) hours and the use of such accommodations is authorized by the proper officer, in which event no compensation shall be allowed for time spent traveling or waiting.

(c) A lieutenant, sergeant or patrolman performing service which does not permit him to leave and return to his headquarters the same day shall be reimbursed for actual necessary expense incurred for meals and lodging while away from headquarters.

Compensa-  
on  
claimed

4-J-1 (a) Claims for money alleged to be due may be made only by a claimant, or by his duly accredited representative on his behalf, and must be presented in writing, to the Chief of Police within thirty (30) days from the date of occurrence, except:

(1) Time off duty on account of furlough, sickness, disability, or leave of absence, shall extend the time limit specified in paragraph (a) of this Rule (4-J-1) by the period of such time off duty.

(2) When a claim for money alleged to be due is based on an occurrence during a period when the claimant was out of active service on account of furlough, sickness, disability or leave of absence, the claim must be made, in writing, within thirty (30) days from the date the claimant resumes duty.

(b) A claim which is not made in accordance with the foregoing paragraph (a) of this Rule (4-J-1), including exceptions (1) and (2) shall not be entertained or allowed.



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(c) When a claim has been presented in accordance with the foregoing paragraph (a) of this Rule (4-J-1), and is not allowed, the claimant and General Chairman will be notified to that effect, in writing, within thirty (30) days from the date his claim was presented. When not so notified his claim will be allowed.

(d) When a claim is allowed the interested claimant and his duly accredited representative shall be advised, in writing, the amount involved and the payroll on which the payment will be made.

(e) A claim which has been denied in accordance with the foregoing paragraph (c) of this Rule (4-J-1), shall be considered invalid unless it is listed for discussion by the duly accredited representative with the Manager of Personnel within thirty (30) days from the date on which the claim was initially denied.

RULE NO. 5 - HANDLING OF MEN

Starting  
time

5-A-1 No assignment shall have a starting time after 12:00 Midnight and before 6:00 A.M. except in case of emergency or where a definite requirement of the service exists.

Extra  
list

5-A-2 (a) An extra list of patrolmen will be established for the purpose of covering all vacancies, excluding vacations, in positions of patrolmen, or to perform extra work as directed by the Chief of Police or his representative.

(b) The number of extra positions to be established under paragraph (a) hereof will be based upon the requirements of the service and will be determined by the Carrier.

(c) The positions on the extra list will be advertised and assigned in accordance with the provisions of Rules 2-A-1 and 2-B-1. The bulletin will show the tours of duty as various, and that two consecutive rest days per week will be granted.

(d) The patrolmen awarded or assigned to the extra list will be guaranteed five (5) days work per week and will be accorded two (2) consecutive rest days per week. Extra patrolmen will be used in seniority order to cover known vacancies.

(e) When known vacancies exist or when it is known that extra work is to be performed, extra patrolmen will be notified the preceding day of such vacancies or extra work.

(f) When extra men are not given an assignment on the preceding day, they shall be required to contact the Desk Officer on the following day prior to 12 Noon for an assignment that day. If an extra patrolman is given an assignment it shall not be changed.

## WARD EXHIBIT A

(g) When no extra patrolmen are available at the pro rata rate of pay to cover vacancies in regular positions, the following procedure will govern:

(1) Where a regularly assigned patrolman's relief does not report, the patrolman who is to be relieved will be given the opportunity of doubling out.

(2) If the vacancy cannot be filled in accordance with paragraph (1), then the senior patrolman who desires overtime work and is off account of rest days shall be used.

(3) No regularly assigned patrolman shall be used on his rest days to cover vacancies if such use will prohibit him from working his regular position.

(4) In the application of this Rule, regularly assigned patrolmen who desire to work on their rest days, shall file their names, addresses and telephone numbers with the proper officer of the Carrier.

(h) The provisions of Rules 4-E-1 and 4-I-1 of the schedule Agreement shall not be applicable to extra patrolmen filling vacancies, nor shall it be applicable to regular patrolmen working on their rest days. Morris Park will be the headquarters for extra patrolmen when performing extra work.

(i) Where the term "regularly assigned patrolman" is used in this Agreement, it is understood that it shall also include an advertised relief position of patrolman.

Use of regu-  
lar patrol-  
men on  
rest days

(j) Regularly assigned patrolmen desiring to work on their rest days must make themselves available for service on such days. Should a regularly assigned patrolman refuse an assignment on a rest day, his request will not be honored for such work for a period of three (3) months. However, if he notifies the Desk Officer twenty-four (24) hours prior to his first rest day that he will not be available, the foregoing will not apply.

#### RULE NO. 6 - DISCIPLINE

Suspension  
or dis-  
missal

6-A-1 (a) An employe shall not be disciplined nor dismissed from service without a fair and impartial trial.

(b) When a major offense has been committed an employe suspected by the Management to be guilty thereof may be held out of service pending trial and decision.

Written  
statements

6-B-1 (a) An employe who is required to make a statement prior to the trial in connection with any matter which may eventuate in the application of discipline to any employe, if he desires to be represented, may be accompanied



## WARD EXHIBIT A

by a duly accredited representative, as that term is defined in this Agreement. A copy of his statement, if reduced to writing, and signed by him, shall be furnished him and the General Chairman by the Management upon request.

(b) In the event that the employe involved indicates that he does not desire representation, or if he is represented by some one other than a representative of the Brotherhood of Railroad Trainmen, then the Brotherhood's representative will take no part in the proceedings except to observe that there is no violation of the Rules and Working Conditions Agreement.

**Advance notice of trial** 6-C-1 (a) An employe who is accused of an offense and who is directed to report for a trial therefor, will be given reasonable advance notice, in writing, of the exact offense for which he is to be tried and the time and place of the trial. A copy of such notice will be furnished the General Chairman.

**Representation at trial** (b) If he desires to be represented at such trial, he may be accompanied by a duly accredited representative, as that term is defined in this Agreement. The accused employe or duly accredited representative shall be permitted to question witnesses insofar as the interests of the accused employe are concerned. The employe shall make his own arrangements for the presence of the said representative and of any witnesses appearing on his behalf, and no expense incident thereto will be borne by the Company.

(c) In the event that the employe involved indicates that he does not desire representation, or if he is represented by some one other than a representative of the Brotherhood of Railroad Trainmen, then the Brotherhood's representative will take no part in the proceedings except to observe that there is no violation of the Rules and Working Conditions Agreement.

(d) Copy of trial record shall be given to employe and General Chairman.

**Notice of discipline** 6-C-2 (a) If discipline is to be imposed following trial and decision, the employe to be disciplined will be given written notice thereof at least ten (10) days prior to the date on which the discipline is to become effective, except that in cases involving dismissal such dismissal may be made effective at any time after decision without advance notice.

(b) If the discipline to be applied is suspension, the time the employe is held out of service prior to the serving of the notice of discipline shall be applied against the period of suspension.

RULE NO. 7 - APPEALS

**Discipline-right of appeal** 7-A-1 (a) An employe who considers that an injustice has been done him in discipline matters and who has appealed his case, in writing, to the Superintendent of Transportation, within ten (10) days, shall be given a hearing.

## WARD EXHIBIT A

This appeal, where the discipline imposed is suspension, shall act as a stay (except in the case of a major offense) in imposing the suspension until after the employee has been given a hearing.

(b) At hearings on appeal, an employee may, if he desires to be represented at such hearings, be represented at his own expense, by the duly accredited representative, as that term is defined in this Agreement.

(c) After the appeal has been acted upon by the Superintendent of Transportation, the employee shall be advised, in writing, of his decision. If the decision in cases of suspension is to the effect that suspension shall be imposed, either in whole or for a reduced period, the stay referred to in paragraph (a) of this Rule (7-A-1) shall be lifted and the suspension imposed.

(d) When an employee is held out of service on a charge and he is later exonerated, the charge shall be stricken from his record and he shall be compensated for the difference between the amount he earned while out of service or while otherwise employed and the amount he would have earned on the basis of his assigned working hours for the period he was actually out of service.

(e) If the decision of the Superintendent of Transportation is unsatisfactory, the employee or the duly accredited representative on his behalf, may then appeal the case to the Manager of Personnel within ten (10) days.

Other than  
discipline-  
right of  
appeal

7-B-1 (a) When it is considered that an injustice has been done with respect to any matter other than discipline, the employee affected, or the duly accredited representative, as that term is defined in this Agreement, on his behalf, may within ten (10) days present the case, in writing, to the Chief of Police.

(b) If the decision of such superior, which shall be in writing, is unsatisfactory, such decision may then be appealed by the employee affected, or by the duly accredited representative, on his behalf, to the Manager of Personnel within ten (10) days.

(c) Controversial matters on which the duly accredited representative of the organization signatory hereto and the Chief of Police are unable to reach agreement may be handled with the General Chairman signatory hereto and the Manager of Personnel.

### RULE NO. 8 - VACATIONS

Vacations

8-A-1 (a) Each lieutenant and sergeant shall receive an annual vacation of fifteen (15) consecutive work days with pay after he has completed one year of service with this Carrier.

(b) An annual vacation of five (5) consecutive work days with pay will be granted to patrolmen who render compensated service on not less than one hundred twenty (120) days during the preceding calendar year.



## WARD EXHIBIT A

(c) Annual vacations of seven and one half (7 1/2) and ten (10) consecutive work days with pay will be granted to patrolmen who render compensated service on not less than one hundred ten (110) days during the preceding calendar year and who have two (2) and three (3) years of continuous service respectively and who, during such period of continuous service, render compensated service on not less than one hundred ten (110) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of two (2) or three (3) of such years, not necessarily consecutive.

(d) An annual vacation of fifteen (15) consecutive work days with pay will be granted patrolmen who render compensated service on not less than one hundred (100) days during the preceding calendar year and who have fifteen (15) or more years of "continuous service" and who, during such period of continuous service render compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of fifteen (15) such years, not necessarily consecutive.

(e) Vacation may be taken from January 1st to December 31st and due regard consistent with the requirements of service shall be given to the desires and preference of the employees in seniority order when fixing the dates for their vacations.

A copy of the Vacation schedule shall be furnished the Local Chairman. When vacation relief positions are advertised the bulletin shall set forth the name of the employee who is on vacation and the period of his vacation.

Employees shall have the right to take their vacation in consecutive weeks or in split weeks consistent with the requirements of service.

(f) Calendar days in each current qualifying year on which an employee renders no service because of his own sickness or because of his own injury shall be included in computing days of compensated service and years of continuous service for vacation-qualifying purposes on the basis of a maximum of ten (10) such days for an employee with less than three (3) years of service; a maximum of twenty (20) such days for an employee with (3) but less than fifteen (15) years of service; and a maximum of thirty (30) such days for an employee with fifteen (15) or more years of service with the employing carrier.

(g) In instances where employees have performed seven (7) months service with the employing carrier, or have performed, in a calendar year, service sufficient to qualify them for a vacation in the following calendar year, and subsequently become members of the Armed Forces of the United States, the time spent by such employees in the Armed Forces will be credited as qualifying service in determining the length of vacations for which they may qualify upon their return to the service of the employing carrier.

(h) The vacation provided for in this Agreement shall be considered to have been earned when the employee has qualified under paragraphs (b), (c)

## WARD EXHIBIT A

and (d). If an employee's employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, non-compliance with a union shop agreement, or failure to return after furlough he shall at the time of such termination be granted full vacation pay earned up to the time he leaves the service, including pay for vacation earned in the preceding year or year and not yet granted, and the vacation for the succeeding year if the employee has qualified therefor under paragraphs (b), (c) and (d). If an employee thus entitled to vacation or vacation pay shall die, the vacation pay earned and not received shall be paid to such beneficiary as may have been designated, or in the absence of such designation, the surviving spouse or children or his estate, in that order of preference.

(i) Nothing in this Rule (8-A-1) shall be construed to prohibit the Company from not filling a position when the incumbent thereof is absent on vacation nor from requiring other employees to assist in the performance of the duties of the position to the extent deemed essential.

(j) Service rendered under agreements between this company and one or more organizations shall be counted in computing days of compensated service and years of continuous service for vacation qualifying purposes set forth in paragraphs (a), (b), (c) and (d) hereof.

### RULE NO. 9 - MISCELLANEOUS

Changes of  
titles of  
positions

9-A-1 Titles of positions covered by this Agreement shall not be changed for the purpose of removing such positions from the application of the provisions of this Agreement. When there is a change in the classification of work of an established position, such change shall not operate to remove the position from the provisions of this Agreement unless agreed to by the Manager of Personnel and the General Chairman signatory hereto.

New positions-  
establish-  
ment of -  
rates for

9-B-1 When a new position is created, the rate of pay for such position shall be fixed in conformity with the authorized rates of pay of existing positions (without regard to any rate received by occupants of the positions as incumbent rates) which involve similar work, duties and responsibility.

Applicants  
for employ-  
ment

9-C-1 (a) Applicants for employment shall be required to answer questions necessary to determine whether or not they are qualified to become satisfactory employees and shall undergo a physical examination to determine their fitness for the work required and to protect the health and safety of employees.

(b) Application for new employees shall be approved or disapproved within ninety (90) days after applicants begin work except employees who furnish false information on applications for employment may be dropped from service within ninety (90) days from the date they first performed service. After ninety (90) days from the date they first performed service they may not be dismissed from service for giving false information on their applications for employment, except in the manner set forth in Rule 6-A-1.



## WARD EXHIBIT A

Physical ex- 9-D-1 (a) An employe may be required to take physical examinations at  
aminations stated intervals as required by the Company. Such examinations will be given  
during the employe's regular tour of duty so far as practicable and without de-  
duction from their regular wages.

Determina- 9-D-2 (a) When an employe has been removed from his position on account  
tion of of his physical condition and the General Chairman signatory hereto desires the  
physical fit- question of his physical fitness to be finally decided before he is permanently re-  
ness of men moved from his position, the case shall be handled in the following manner:  
removed

from ser-  
vice

(b) The General Chairman signatory hereto shall bring the case to  
the attention of the Manager of Personnel. The Management and the Organization  
shall each select a doctor to represent them, each notifying the other of the name  
and address of the doctor selected. The two doctors thus selected shall confer  
and appoint a third doctor.

(c) Such Board of Doctors shall then fix a time and place for the  
employe to meet them. After completion of the examination they shall make a  
full report, in triplicate, one copy each to be sent the Manager of Personnel,  
Medical Examiner and the General Chairman signatory hereto.

(d) The decision of the Board of Doctors on the physical fitness  
of the employe to continue in his regular occupation shall be final, but this does  
not mean that a change in physical condition shall preclude a re-examination at  
a later time.

(e) The doctors selected for such board shall be experts in the dis-  
ease or injury from which the employe is alleged to be suffering and they shall  
be located at a convenient point so that it will only be necessary for the employe  
to travel a minimum distance and, if possible, not to be away from home for a  
longer period than one day.

(f) The Company and the Organization signatory hereto shall each  
defray the expenses of their respective appointee. At the time their report is  
made, a bill for the fee, and traveling expenses, if there are any, of the third  
appointee should be made in duplicate, one copy to be sent to the Manager of  
Personnel and one copy to the General Chairman signatory hereto. The Company  
and the Organization signatory hereto shall each pay one-half of the fee and  
traveling expense of the third appointee.

Posting of  
bulletins

9-E-1 A place accessible to all employes will be provided for the posting  
of bulletins and notices affecting employes covered by this Agreement. No  
bulletins or notices will be posted by the employes without the permission of  
the Management.

Service  
letter

9-F-1 When an employe leaves the service of the Company after having  
been continuously employed for six (6) months or more, the Superintendent of  
Transportation shall, upon request, give him a service letter which the employe  
must sign when it is presented to him.

## WARD EXHIBIT A

- Furnishing police equipment** 9-G-1 The Company shall furnish badge, side arms, ammunition, mace, flashlights, bulbs, batteries, hand cuffs and whistle to employees where they are required by the Company to use them in the performance of their duties.
- Bonds and police com-bonds or expense of police commissions required by the Company.** 9-H-1 An employee shall not be required to assume the cost of premiums on missions.
- Use of private automobiles** 9-I-1 (a) An employee shall not be required to furnish their privately owned automobiles for Company business.
- (b) An employee requested to and using his private automobile for Company business shall be allowed mileage made for the use thereof in accordance with the mileage rate established by the Company.
- Locker rooms, etc.** 9-J-1 Police officers' locker rooms, wash rooms and toilets shall be kept in good repair and in a clean, dry and sanitary condition. Good drinking water shall be furnished.
- Injured employees furnishing accident reports** 9-K-1 An employee injured while on duty will not be required to make accident reports before they are given medical attention, but will make them as soon as practicable thereafter. Proper medical attention will be given at the earliest possible moment.
- Minimum force** 9-L-1 (a) Effective with the calendar year of 1962 and 1963, a minimum force of forty-five (45) employees covered by the applicable Rules and Working Conditions Agreement will be employed in the Long Island Rail Road Police Department.
- (b) The foregoing minimum force will remain in effect for the entire year of 1962 and 1963 on a forty-hour per week basis, unless changed in accordance with the provisions of this agreement.
- (c) Any reduction in the number of positions set forth in paragraph (a) hereof may be placed in effect only through conference and agreement between the parties, except that such reductions can be made in accordance with the provisions of paragraphs (d) and (e).
- (d) If reductions are made during any calendar year in the number of positions set forth in paragraph (a), they shall not exceed the rate at which employees leave the service by reason of death, retirement, resignation, dismissal or promotion to positions outside the Scope of the schedule agreement.
- (e) In the event any situation arises which would seriously affect either party, a conference will be held with the representatives of the organization for the purpose of reaching an agreement.
- (f) The Manager of Personnel and the representative of the organization will meet in December of each year to discuss the continuance of the term of this Rule for the succeeding year.



## WARD EXHIBIT A

Compulsory retirement 9-M-1 The seniority of employees coming within the Scope of this Agreement shall be terminated as follows:

(a) Employees who have attained the age of sixty-five (65) years or who shall attain the age of sixty-five (65) years before July 1, 1962, shall have their seniority terminated effective June 30, 1962.

(b) Each employee who reaches the age of sixty-five (65) subsequent to June 30, 1962, shall have his seniority terminated effective the last day of the month in which his sixty-fifth (65th) birthday occurs, or on June 30th of the year in which his sixty-fifth (65th) birthday occurs, whichever is later.

(c) Employees whose seniority has been terminated under the provisions of this Agreement shall not be re-employed by the Carrier for service within the classes covered by this Agreement.

(d) Neither this Rule, nor any application thereof, shall be considered or used as a basis for any time or money claim against the Company.

nion shop 9-N-1 The Union Shop Agreement signed February 18, 1963, is applicable to employees under all the provisions of this Agreement, and is reproduced as "Appendix A".

health d welfare 9-O-1 An agreement concerning health and welfare benefits signed May 22, 1963, is applicable to employees under all the provisions of this Agreement, and is reproduced as "Appendix B".

turn duty 9-P-1 The Return-to-Duty Agreement signed May 20, 1952, is applicable to employees under all the provisions of this Agreement, and is reproduced as "Appendix C".

### RULE NO. 10 - NOTICE OF CHANGES

10-A-1 This Agreement shall remain in full force and effect until changed or terminated in the same manner prescribed by the Railway Labor Act, as amended

LONG ISLAND RAIL ROAD COMPANY

BROTHERHOOD OF RAILROAD TRAINMEN

T. F. Kustes

/s/ H. J. Pryor

anager of Personnel

General Chairman

/s/ P. P. Fabel

Local Chairman

ca, N.Y.  
nber 18, 1963

## WARD EXHIBIT A

THE LONG ISLAND RAIL ROAD COMPANY  
POLICE DEPARTMENT

BASIC RATES OF PAY - EFFECTIVE July 1, 1963

	<u>Weekly</u>
LIEUTENANTS	\$ 136.22
SERGEANTS, 1st Year	123.15
2nd Year	125.35
3rd Year	127.57
PATROLMEN, 1st Year	113.15
2nd Year	115.35
3rd Year	117.57
PATROLMEN, Assigned to Investigative Duty	125.50



## WARD EXHIBIT A

This Agreement is entered into this 18th day of February, 1963, by and between the Long Island Rail Road Company and its employees in the Police Department represented by the Brotherhood of Railroad Trainmen.

IT IS AGREED:Section 1.

In accordance with and subject to the terms and conditions hereinafter set forth, all employees of the carriers now or hereafter subject to the rules and working conditions agreements between the parties hereto, except as hereinafter provided, shall, as a condition of their continued employment subject to such agreements, become members of the organization party to this agreement representing their craft or class within sixty calendar days of the date they first perform compensated service as such employees after the effective date of this agreement, and thereafter shall maintain membership in such organization; except that such membership shall not be required of any individual until he has performed compensated service on thirty days within a period of twelve consecutive calendar months. Nothing in this agreement shall alter, enlarge or otherwise change the coverage of the present or future rules and working conditions agreements.

Section 2.

This agreement shall not apply to employees while occupying positions which are excepted from the bulletining and displacement rules of the individual agreements, but this provision shall not include employees who are subordinate to and report to other employees who are covered by this agreement. However, such excepted employees are free to be members of the organization at their option.

Section 3.

(a) Employees who retain seniority under the Rules and Working Conditions Agreements governing their class or craft and who are regularly assigned or transferred to full time employment not covered by such agreements, or who, for a period of thirty days or more, are (1) furloughed on account of force reduction, or (2) on leave of absence, or (3) absent on account of sickness or disability, will not be required to maintain membership as provided in Section 1 of this agreement so long as they remain in such other employment, or furloughed or absent as herein provided, but they may do so at their option. Should such employees return to any service covered by the said Rules and Working Conditions Agreements and continue therein thirty calendar days or more, irrespective of the number of days actually worked during that period, they shall, as a condition of their continued employment subject to such agreements, be required to become and remain members of the organization representing their class or craft within thirty-five calendar days from date of their return to such service.

(b) The seniority status and rights of employees furloughed to serve in the Armed Forces or granted leaves of absence to engage in studies under an educational aid program sponsored by the federal government or a state government for the benefit of ex-service men shall not be terminated by reason of any of the provisions of this agreement but such employees shall, upon resumption of employment, be considered as new employees for the purposes of applying this agreement.

## WARD EXHIBIT A

(c) Employees who retain seniority under the rules and working conditions agreements governing their class or craft and who, for reasons other than those specified in subsections (a) and (b) of this section, are not in service covered by such agreements, or leave such service, will not be required to maintain membership as provided in Section 1 of this agreement so long as they are not in service covered by such agreements, but they may do so at their option. Should such employees return to any service covered by the said rules and working conditions agreements they shall, as a condition of their continued employment, be required, from the date of return to such service, to become and remain members in the organization representing their class or craft.

(d) Employees who retain seniority under the rules and working conditions agreements of their class or craft, who are members of an organization signatory hereto representing that class or craft and who in accordance with the rules and working conditions agreement of that class or craft temporarily perform work in another class of service shall not be required to be members of another organization party hereto whose agreement covers the other class of service until the date the employees hold regularly assigned positions within the scope of the agreement covering such other class of service.

Section 4.

Nothing in this agreement shall require an employee to become or to remain a member of the organization if such membership is not available to such employee upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. For purposes of this agreement, dues, fees, and assessments, shall be deemed to be "uniformly required" if they are required of all employees in the same status at the same time in the same organization unit.

Section 5.

(a) Each employee covered by the provisions of this agreement shall be considered by a carrier to have met the requirements of the agreement unless and until such carrier is advised to the contrary in writing by the organization. The organization will notify the carrier in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, of any employee who it is alleged has failed to comply with the terms of this agreement and who the organization therefore claims is not entitled to continue in employment subject to the Rules and Working Conditions Agreement. The form of notice to be used shall be agreed upon by the individual railroad and the organizations involved and the form shall make provision for specifying the reasons for the allegation of noncompliance. Upon receipt of such notice, the carrier will, within ten calendar days of such receipt, so notify the employee concerned in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. Copy of such notice to the employee shall be given the organization. An employee so notified who disputes the fact that he has failed to comply with the terms of this agreement, shall within a period of ten calendar days from the date of receipt of such notice, request the carrier in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, to accord him a hearing. Upon receipt of such request the carrier shall set a date for hearing which shall be held within ten calendar days of the date of receipt of request therefor. Notice of the date set for hearing



## WARD EXHIBIT A

shall be promptly given the employee in writing with copy to the organization, by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. A representative of the organization shall attend and participate in the hearing. The receipt by the carrier of a request for hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of the carrier is rendered.

In the event the employee concerned does not request a hearing as provided herein, the carrier shall proceed to terminate his seniority and employment under the Rules and Working Conditions Agreement not later than thirty calendar days from receipt of the above described notice from the organization, unless the carrier and the organization agree otherwise in writing.

(b) The carrier shall determine on the basis of the evidence produced at the hearing whether or not the employee has complied with the terms of this agreement and shall render a decision within twenty calendar days from the date that the hearing is closed, and the employee and the organization shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested.

If the decision is that the employee has not complied with the terms of this agreement, his seniority and employment under the Rules and Working Conditions Agreement shall be terminated within twenty calendar days of the date of said decision except as hereinafter provided or unless the carrier and the organization agree otherwise in writing.

If the decision is not satisfactory to the employee or to the organization it may be appealed in writing, by Registered Mail, Return Receipt Requested, directly to the highest officer of the carrier designated to handle appeals under this agreement. Such appeals must be received by such officer within ten calendar days of the date of the decision appealed from and shall operate to stay action on the termination of seniority and employment, until the decision on appeal is rendered. The carrier shall promptly notify the other party in writing of any such appeal, by Registered Mail, Return Receipt Requested. The decision on such appeal shall be rendered within twenty calendar days of the date the notice of appeal is received, and the employee and the organization shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested.

If the decision on such appeal is that the employee has not complied with the terms of this agreement, his seniority and employment under the Rules and Working Conditions Agreement shall be terminated within twenty calendar days of the date of said decision unless selection of a neutral is requested as provided below, or unless the carrier and the organization agree otherwise in writing. The decision on appeal shall be final and binding unless within ten calendar days from the date of the decision the organization or the employee involved requests the selection of a neutral person to decide the dispute as provided in Section 5 (c) below. Any request for selection of a neutral person as provided in Section 5 (c) below shall operate to stay action on the termination of seniority and employment until not more than ten calendar days from the date decision is rendered by the neutral person.

(c) If within ten calendar days after the date of a decision on appeal by the highest officer of the carrier designated to handle appeals under this agreement the organization or the employee involved requests such highest officer in writing by

## WARD EXHIBIT A

Registered Mail, Return Receipt Requested, that a neutral be appointed to decide the dispute, a neutral person to act as sole arbitrator to decide the dispute shall be selected by the highest officer of the carrier designated to handle appeals under this agreement or his designated representative, the Chief Executive of the organization or his designated representative, and the employee involved or his representative. If they are unable to agree upon the selection of a neutral person any one of them may request the Chairman of the National Mediation Board in writing to appoint such neutral. The carrier, the organization and the employee involved shall have the right to appeal and present evidence at a hearing before such neutral arbitrator. Any decision by such neutral arbitrator shall be made within thirty calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The carrier, the employee, and the organization shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested. If the position of the employee is sustained, the fees, salary and expenses of the neutral arbitrator shall be borne in equal shares by the carrier and the organization; if the employee's position is not sustained, such fees, salary and expenses shall be borne in equal shares by the carrier, the organization and the employee.

(d) The time periods specified in this section may be extended in individual cases by written agreement between the carrier and the organization.

(e) Provisions of investigation and discipline rules contained in the Rules and Working Conditions Agreement between a carrier and the organization will not apply to cases arising under this agreement.

(f) The General Chairman of the organization shall notify the carrier in writing of the title(s) and address(es) of its representatives who are authorized to serve and receive the notices described in this agreement. The carrier shall notify the General Chairman of the organization in writing of the title(s) and address(es) of its representatives who are authorized to receive and serve the notices described in this agreement.

(g) In computing the time periods specified in this agreement, the date on which a notice is received or decision rendered shall not be counted.

#### Section 6.

Other provisions of this agreement to the contrary notwithstanding, the carrier shall not be required to terminate the employment of an employee until such time as a qualified replacement is available. The carrier may not, however, retain such employee in service under the provisions of this section for a period in excess of sixty calendar days from the date of the last decision rendered the provisions of Section 5, or ninety calendar days from the date of receipt of notice from the organization in cases where the employee does not request a hearing. The employee whose employment is extended under the provisions of this section shall not, during such extension, retain or acquire any seniority rights. The position will be advertised as vacant under the bulletining rules of the respective agreements but the employee may remain on the position he held at the time of the last decision, or at the date of receipt of notice where no hearing is requested pending the assignment of the successful applicant, unless displaced or unless the position is abolished. The above periods may be extended by agreement between the carrier and the organization involved.



## WARD EXHIBIT A

Section 7.

An employee whose seniority and employment under the Rules and Working Conditions Agreement is terminated pursuant to the provisions of this agreement or whose employment is extended under Section 6 shall have no time or money claims by reason thereof.

If the final determination under Section 5 of this agreement is that an employee's seniority and employment in a craft or class shall be terminated, no liability against the carrier in favor of the organization or other employees based upon an alleged violation, misapplication or non-compliance with any part of this agreement shall arise or accrue during the period up to the expiration of the 60 or 90 day periods specified in Section 6, or while such determination may be stayed by a court, or while a discharged employee may be restored to service pursuant to judicial determination. During such periods, no provision of any other agreement between the parties hereto shall be used as the basis for a grievance or time or money claim by or on behalf of any employee against the carriers predicated upon any action taken by the carrier in applying or complying with this agreement or upon an alleged violation, misapplication or non-compliance with any provisions of this agreement. If the final determination under Section 5 of this agreement is that an employee's employment and seniority shall not be terminated, his continuance in service shall give rise to no liability against the carrier in favor of the organization or other employees based upon an alleged violation, misapplication or non-compliance with any part of this agreement.

Section 8.

In the event that seniority and employment under the Rules and Working Conditions Agreement is terminated by the carrier under the provisions of this agreement, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforceable, the organization shall indemnify and save harmless the carrier against any and all liability arising as the result of such improper, unlawful, or unenforceable termination of seniority and employment; provided, however, that this section shall not apply to any case in which the carrier involved is the plaintiff or the moving party in the action in which the aforesaid determination is made or in which case such carrier acts in collusion with any employee; provided further, that the afore-mentioned liability shall not extend to the expense to the carrier in defending suits by employees whose seniority and employment are terminated by the carrier under the provisions of this agreement.

Section 9.

An employee whose employment is terminated as a result of non-compliance with the provisions of this agreement shall be regarded as having terminated his employee relationship for vacation purposes.

Section 10.

(a) The carriers party to this agreement shall periodically deduct from the wages of employees subject to this agreement periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in such organization, and shall pay the amount so deducted to such officer of the organization as the organization shall designate; provided, however, that the requirements of this subsection (a) shall not be effective with respect to any individual employee until he shall have furnished the carrier with a written assignment to

## WARD EXHIBIT A

the organization of such membership dues, initiation fees and assessments, which assignment shall be revocable in writing after the expiration of one year or upon the termination of this agreement whichever occurs sooner.

Section 11.

This agreement shall become effective on February 18, 1963 and shall remain in effect until modified or changed in accordance with the provisions of the Railway Labor Act, as amended.

THE LONG ISLAND RAIL ROAD COMPANY

/s/ T. F. Kustes

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Manager of Personnel

BROTHERHOOD OF RAILROAD TRAINMEN

/s/ H. J. Pryor

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General Chairman

Jamaica, N.Y.  
Feb. 18, 1963

APPENDIX "A", Cont'd.



Agreement entered into this 22nd day of May, 1963  
by and between The Long Island Rail Road Company  
and its employees of the Police Department repre-  
sented by the Brotherhood of Railroad Trainmen.

IT IS AGREED:

1. Effective June 1, 1963, the Carrier shall, in lieu of wage equivalents, transmit to the Trainmen's Health and Welfare Fund the sum of \$30.45 per month for each qualifying employee.

2. Employees who become furloughed or who leave the service by reason of resignation or dismissal shall not be eligible for any benefits under this Agreement. (Such employees may, if they so desire, continue the program at their own expense.)

3. The term "qualifying employee" as used in this agreement is understood to mean that such employee must first have rendered compensated service to the Carrier during the preceding month, and have been in continuous active service with the Carrier for not less than sixty days.

4. This agreement shall terminate automatically on the effective date of a change in the duly accredited representative under the Railway Labor Act of any class or craft of employee covered hereby.

5. This Agreement, which is effective May 22, 1963, shall supersede all existing agreements covering a life insurance policy and health and welfare benefits for employees of the Police Department, and shall remain in full force and effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

THE LONG ISLAND RAIL ROAD COMPANY

/s/ T. F. Kustes

\_\_\_\_\_  
Manager of Personnel

Jamaica, N. Y.

BROTHERHOOD OF RAILROAD TRAINMEN

/s/ H. J. Pryor

\_\_\_\_\_  
General Chairman

APPENDIX "B"

## WARD EXHIBIT A

Agreement entered into by and between The Long Island Rail Road Company, Wm. Wver, Trustee, the Association of General Chairmen, and Employees of said Company represented by the Labor Organizations signatory hereto, for the purpose of setting forth the circumstances under which employees who are now required to secure return-to-duty cards will be required to secure or not to secure them commencing May 20, 1952.

IT IS AGREED:

1. Employees covered by this Agreement who are off duty on account of sickness or personal injury not connected with railroad service for 6 work days or less, exclusive of relief days or vacation, will not be required to secure a return-to-duty card before being permitted to return to work.
2. Employees covered by this Agreement who are off duty on account of sickness or personal injury not connected with railroad service more than 6 work days, exclusive of relief days or vacation, will be required to secure a return-to-duty card before being permitted to return to work.
3. Employees covered by this Agreement who lose time on account of a personal injury connected with railroad service must secure a return-to-duty card before being permitted to return to work.
4. The doctor's examination of the employee who is required to take a physical examination in connection with securing a return-to-duty card, will be confined to the illness or personal injury not connected with railroad service which caused him to be off duty.
5. Employees covered by this Agreement who are off duty on leave of absence less than 30 days will not be required to secure a return-to-duty card before returning to work.
6. Employees covered by this Agreement who are off duty on leave of absence 30 days or more must secure a return-to-duty card before returning to work.
7. This Agreement is subject to such approval as may be necessary under the terms of the executive order by the President of the United States taking over the railroads.
8. (a) This Agreement shall be effective as of May 20, 1952, and shall continue in effect until it is changed under the provisions of the Amended Railway Labor Act.  
  
(b) Should the Association of General Chairmen of the Labor Organizations signatory hereto or The Long Island Rail Road Company desire to revise or modify this Agreement, written advance notice containing the proposed changes shall be given as provided in the Amended Railway Labor Act.

(SIGNATURES NOT REPRODUCED)

APPENDIX "C"



## WARD EXHIBIT B

The Long Island  
Rail Road

Jamaica Station, Jamaica, New York 11435 Phone 212 JAmalca 6-0900

Chairman William J. P. ...  
 Lawrence E. ...  
 Leon ...  
 William ...  
 Don ...  
 Justin ...  
 Harold ...  
 Martin ...  
 Fred ...  
 Ed ...  
 William ...

May 25, 1972

CERTIFIED MAIL

Mr. S.D. Maddaloni  
 248 Lincoln Avenue  
 St. James, New York

Please arrange to be present at a trial to be held at the office of the Director Security, Main Building, Morris Park, 121 St. and Atlantic Ave., Richmond Hill, New York, at 10:00 AM, on June 7, 1972, in connection with the following; Wherein you are charged with violations of the Long Island Railroad Police Department Manual of Procedure; on May 18, 1972.

Charge #1. Page 11, Paragraph 27.0

Charge #2. Page AR-7, Paragraph 32.3

You may, if you so desire, be accompanied by one or more representatives of your Organization, subject to the terms of the current applicable agreement, without expense to the Company.

You may produce witnesses in your own behalf, without expense to the Company, and you or your representatives may examine these witnesses.

You will be expected to be present throughout the entire trial.

*H.C. Cook*

H.C. Cook  
 Commanding Officer  
 Patrol Division

cc: L.J.F.  
 Trial Officer-J.M.S.  
 Teamsters Local 808  
 Witness - M.M. S.F.  
 Witness - G.H.N.  
 File L

## WARD EXHIBIT C

## LONG ISLAND RAIL ROAD POLICE DEPARTMENT

MANUAL OF PROCEDURES

"27.0 Failure to comply with the Manual of Procedure or with lawful orders of a superior, neglect of duty or interference with others in the performance of their duties, or any other act or omission prejudicial to efficiency or discipline, shall constitute misconduct."

"32.3 Carrier reserves the right to investigate any or all employees calling off account sickness by telephone or other means available to Carrier. If a representative of the Carrier calls by telephone, or in person, at the place where the absent employee advised, under 32.2 hereof, that he could be found and cannot contact him, the absent employee will be subsequently advised by certified mail of Carrier's inability to contact him and he will be deemed to be absent without leave unless he can, within seven (7) calendar days from date of the letter's certification, prove to Carrier's satisfaction that he was unable to respond to such inquiry. Unless such employee complies with these provisions he will not be granted sick leave and will be subject to appropriate disciplinary action in accordance with the provisions of the existing agreement."



## WARD EXHIBIT D

## THE LONG ISLAND RAIL ROAD

TRIAL OF:

Patrolman Stephen Maddaloni, Long Island Rail Road

HELD BY:

Captain J. M. Slattery, Trial Officer  
Morris Park, Richmond Hill  
June 7, 1972

IN THE PRESENCE OF:

E. Maul, Representative Local 808  
International Brotherhood of Teamsters  
D. Ciullo, Stenographer

WITNESSES: (Carrier)

Sergeant M. Matthaei, Shield 204  
Captain G. H. Nelson

IN CONNECTION WITH:

Violations of the Long Island Railroad  
Police Department Manual of Procedure on  
May 18, 1972 page 11, paragraph 27.0 and  
page AR-7, paragraph 32.3CAPTAIN SLATTERY TO PATROLMAN MADDALONI

- Q. Did you receive a letter dated May 25, 1972, certified mail, which was sent to you, Mr. S. D. Maddaloni, 248 Lincoln Avenue, St. James, New York, asking you to please arrange to be present at a trial to be held at the office of the Director Security, Main Building, Morris Park, 121 Street and Atlantic Avenue, Richmond Hill, New York, at 10:00AM, on June 7, 1972, in connection with the following: Wherein you are charges with violations of the Long Island Railroad Police Department Manual of Procedure: on May 18, 1972: Charge #1, page 11, paragraph 27.0 and charge #2, page AR-7, paragraph 32.3. You may, if you so desire, be accompanied by one or more representatives of your Organization, subject to the terms of the current applicable agreement, without expense to the Company. You may produce witnesses in your own behalf, without expense to the Company, and you or your representatives may examine these witnesses. You will be expected to be present throughout the entire trial. H. C. Cook, Commanding Officer Patrol Division?
- A. Yes.
- Q. The Carrier has two witnesses that will appear, Sergeant M. Mattahaei and Captain George Nelson.

MR. MAUL

I move that be stricken. I have some motions to make prior to any witnesses being brought in, Captain Slattery. For the record, Patrolman Maddaloni pleads not guilty to charge number one, page 11, paragraph 27.0 of the Rules and Procedures governing the Long Island Railroad Police Department. On charge number two, we move to dismiss this charge as deficient on its face, as no meaning whatsoever to the man being off sick or not being at home. Only as to the fact if this man is being paid or has submitted an application for

CARRIERS EXHIBIT NO. 1

## WARD EXHIBIT D

TRIAL OF: S. MADDALONI, LONG ISLAND RAIL ROAD PATROLMAN

JUNE 7, 1972

reimbursement for being sick. This is not part of the Rules and Procedures. This is an agreement rule. It has been inserted for convenience into the binder of the Rules and Procedures. It is the opinion of Local 808 and I speak for John Mahoney that in no way can this be construed as a charge against Patrolman Maddaloni for not being home at the time that he was called. Since Patrolman Maddaloni had not submitted any request for sick leave benefits he cannot be charged with AR-7.

CAPTAIN SLATTERY

I'm reading 32.3 of AR-7.

MR. MAUL

Mr. Trial Officer, the one paragraph is dependant on the preceeding paragraphs in each and every case. On AR-7, if you are going to read 32.3, there I would insist that the entire agreement rules of AR-7, verbatim, word for word be read into the record to show the connection.

CAPTAIN SLATTERY

On the motion to have this dismissed, that motion is denied.

MR. MAUL

At this time I would like to say that on May 31, the same motion was made and the same motion was denied and at that time we asked for a legal interpretation from the Legal Department of the Long Island Railroad that the parties who made this contract, to it, Walter Schlager and Mr. Harold Pryor, General Chairman of the United Transportation Union and we were told that legal interpretation would be forth coming. Based on this interpretation, on the denial for this motion, local 808 refuses at this time to proceed with this trial with regard to anything under the agreement rules, AR-7 until it is delivered into the hands of the mutual mediator for a decision, as it is not part of the Rules and Procedures of the Long Island Railroad Police Department. It is an agreement strictly for compensation for sick leave. We are willing to proceed with the others, however, at this time we refuse to proceed with AR-7 until we have had an opportunity to take this into a mutual mediator between local 808 and the Long Island Railroad.

CAPTAIN SLATTERY

As I understand, you're waiting for an opinion from the Law Department.

MR. MAUL

We're waiting for an opinion from the parties who contracted this agreement. The agreement rules preceeded the Rules and Procedures. The agreement rules under AR-7 refer to disciplinary action when a person falsly makes an application for sick leave. In this case. Patrolman Maddaloni did not make any application whatsoever for sick leave in that we have a seven day waiting period before we can even submit an application for sick leave. Therefore, we take the position that we are refused to proceed at this time and ask for an adjournment of that charge under AR-7 until we have an interpretation either by the



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contractual parties to AR-7 or a mediator from the National Mediation Board.

CAPTAIN SLATTERY

We will proceed with the trial. We will now have Sergeant Matthaei.

CAPTAIN SLATTERY TO SERGEANT MATTHAEI

- Q. Will you identify yourself, for the record.  
A. Sergeant Michael Matthaei, shield number 204.
- Q. You were on duty on Thursday, May 18, 1972?  
A. I was.
- Q. What were your duties?  
A. Field sergeant "B" tour.
- Q. I have here a report to L. J. Fox, Director-Security from M. Matthaei, shield 204 and the date it was submitted is 5/24/72. Was the basis for which Patrolman Maddaloni brought up on these charges this report? Will you identify this as your report?  
A. Yes.

Mr. Maul and Patrolman Maddaloni are shown a copy of the report.

MR. MAUL

Let the record indicate that the representatives read the report of Sergeant Matthaei regarding the alleged incident on May 18, 1972 at Flatbush Avenue and move that the report be stricken as not being consistent with the charges that Patrolman Maddaloni is now being brought up on.

CAPTAIN SLATTERY

That is denied.

CAPTAIN SLATTERY TO SERGEANT MATTHAEI

- Q. Please read this report for the record, Sergeant Matthaei.  
A. To: L. J. Fox, Director-Security FROM: M. Matthaei, Sergeant #204  
SUBJECT: Violation of the Manual of Procedure dated 5/24/72.

MR. MAUL

For the purposes of this trial, I would ask the trial officer for him to read the report into the record and not Sergeant Matthaei.

CAPTAIN SLATTERY

He wrote it. It's his report. Let him read it in.

MR. MAUL

I object.

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CAPTAIN SLATTERY

That is over ruled.

SERGEANT MATTHAEI

On Thursday, May 18, 1972, the undersigned, in company of Captain G. Nelson responded to Flatbush Avenue Terminal on a routine inspection of the post. At approximately 7:15PM, this date, Ptl. Maddaloni was observed to be in conversation with an unknown female, approximately 21 years old, in the main waiting room area for a period of about five minutes.

When Patrolman Maddaloni had finished his conversation, he was directed to the police room to prepare a report. While Ptl. Maddaloni was on the upper floor, the unknown female struck-up a conversation during which she stated "I missed by train to Ronkonkoma and "Steve" is going to take my home."

At approximately 7:26PM, Ptl. Maddaloni returned to the main floor and was advised by this officer that he was not to engage in conversation with anyone unnecessarily, while on duty. Ptl. Maddaloni then stated that he was going on meal at 7:30 and he could do as he pleased. At 7:30PM Ptl. Maddaloni called off for meal and was observed to accompany the above mentioned female to the parking lot where they engaged in conversation for a period of about 15 minutes.

Captain Nelson and the undersigned then left the FBA Station enroute to Jamaica, and upon arrival there, was informed by Desk Lt. Hendry that Ptl. Maddaloni had called off D/S with a stomach upset, at 8:25PM.

At 11:55PM a verification call was made to Ptl. Maddaloni's home. A female, identified as Mrs. Maddaloni, stated that Ptl. Maddaloni had not returned home, as of that time.

In view of the foregoing, it appears that Ptl. Maddaloni is in violation of the LIRR Manual of Procedure, Chapter 2, page 12, paragraph 35.0 and AR-7, paragraph 32.3

The above forwarded for your information and necessary handling.

M. Matthaei, Sergeant #204

MR. MAUL

For the purposes of cross examination, may I have the report?

CAPTAIN SLATTERY

I will also give him one.

MR. MAUL

He just read it. He just read from it and I would now like to cross examine him based on what he said and I object that he be given any report to read from.

CAPTAIN SLATTERY

He read from his report, he didn't memorize it. If you want a copy he's going to have one



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MR. MAUL

We object to him having a copy and let the objection so be noted on the record. This is contrary to all concepts of law that the witness sit with a copy of the report. We want the right to cross examine on testimony and we reserve the right to this-he not be given a copy of his testimony.

CAPTAIN SLATTERY

This is merely to save time, because he has a right to refresh his memory from the report.

MR. MAUL

Then we would ask that he not read from that unless he is asked questions pertinent to certain paragraphs of it.

CAPTAIN SLATTERY

Certainly.

MR. MAUL

And we ask he turn the report up side down until so asked.

MR. MAUL TO SERGEANT MATTHAEI

- Q. Sergeant Matthaei, the report that you just read into the record, dated May 24, 1972, is your entire testimony regarding the incident on May 18, 1972 at Flatbush Avenue Station, is that correct?
- A. That's correct.
- Q. At what time did you first observe Patrolman Maddaloni in this conversation?
- A. Approximately 7:10, 7:15.
- Q. Where was Patrolman Maddaloni at the time?
- A. Patrolman Maddaloni was standing in the waiting room near the steps and the telephone, toward the rear entrance of the parking lot next to the luncheonette.
- Q. Was Patrolman Maddaloni in full uniform?
- A. He was.
- Q. Did you hear any conversation that Patrolman Maddaloni had with the unknown female?
- A. No, I did not.
- Q. Sergeant Matthaei, why was Ptl. Maddaloni instructed to go up to the Police Room and make a report?
- A. Ptl. Maddaloni was instructed to go up to the Police Room and make a report on another matter that happened prior to the 18 of May on a report that he submitted to Mr. Fox.

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Q. Did he comply with that request?

A. Immediately.

Q. In this report, in paragraph two. You may read the report on this, you stated that while Ptl. Maddaloni was on the upper floor the unknown female struck-up a conversation in which she stated "I missed my train to Ronkonkoma and Steve is going to take me home", to whom did she make this statement?

A. To myself and Captain Nelson was standing next to me.

Q. You don't know if Captain Nelson heard it?

A. Captain Nelson did hear it.

MR. MAUL

I will object to that.

SERGEANT MATTHAEI

You asked if Captain Nelson heard it and I said yes.

MR. MAUL

I will still object to the fact that Captain Nelson heard it until Captain Nelson says it. We call that a conclusion of Sergeant Matthaei.

CAPTAIN SLATTERY

That was a question that could only be answered by a conclusion.

MR. MAUL

We will object to that.

MR. MAUL TO SERGEANT MATTHAEI

Q. In paragraph 3 of your report you state that you stated to Ptl. Maddaloni that he was not to engage in conversation with anyone unnecessarily while on duty, is that correct?

A. That's correct. That was part of the conversation. That is an excerpt of the part of the conversation I had with Ptl. Maddaloni. That was not the entire conversation.

Q. Was this in reference to the conversation Ptl. Maddaloni had with the unknown female?

A. Yes.

Q. And you previously stated that you did not know what conversation Ptl. Maddaloni had with the unknown female?

A. I don't quite follow you.

Q. I asked a question earlier in the trial.

A. My report said we observed him in conversation, not that we overheard what he had said.



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- Q. So you had no knowledge of whether it was necessary or unnecessary?  
A. I didn't say that it was unnecessary. I said he should refrain from any unnecessary conversation. I didn't say the conversation was unnecessary.
- Q. Your report said that he should not engage in conversation unnecessarily  
A. To anyone.
- Q. The intention was that the conversation he had with this unknown female was unnecessary?  
A. It doesn't state so.
- Q. Why did you advise him of that?  
A. I advised him because I felt that he might continue his conversation and at a later time be unnecessary and before he could do it, I would tell him about it.
- Q. There are all conclusions on your part?  
A. It is not
- Q. Mr. Trial Officer, would you direct the witness to let me finish my questions, please.

CAPTAIN SLATTERY

It was in the form of a question.

MR. MAUL TO SERGEANT MATTHAEI

- Q. You advised him that he was not to engage in conversation with anyone unnecessarily?  
A. With anyone, yes.
- Q. While on duty?  
A. That's correct.
- Q. You did not hear any conversation between the unknown female and Ptl. Maddaloni previously?  
A. That's correct.
- Q. Why did you find it necessary to advise him of this at that time, that he is not to engage in unnecessary conversation?  
A. I just reminded him of the Rules and Procedures and that in case he would have any unnecessary conversation then I warn him or with anyone unnecessarily that he would be forewarned on the Manual of Procedure.
- Q. And then you stated it had no reference what so ever to the previous conversation with the unknown female? You were just advising him of the Rules and Procedures on conversation for the sake of advising him?  
A. For the sake of advising him, yes.
- Q. Why did you not advise him then of the entire Rules and Procedures?  
A. Of the entire Rules and Procedures?

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- Q. Yes, since there was no connection.  
A. I did not say there was no connection. You inferred this.
- Q. That conversation could have been necessary in the performance of his duties.  
A. It could have.
- Q. And yet you found it necessary to advise him about conversations?  
A. That's correct.
- Q. Just for the sake of advising him about the Rules and Procedures?  
A. That's correct.
- Q. Since there is no connection in your mind as to his conversation with the female, since you did not hear it, you saw fit to advise him of it, the section of the Rules and Procedures referring to unnecessary conversations and I ask you since you did this, why did you not advise him of the entire Rules and Procedures?  
A. It is not my duty to advise him of the entire Rules and Procedures. I can take excerpts from the Rules and Procedures periodically and go over it with certain members of the force to advise them on certain parts of the Manual of Procedures.
- Q. Sergeant Matthaei, then this was just an extemporaneous advisement on your part about unnecessary conversations, having no bearing what so ever on the previous conversation between Ptl. Maddaloni and the unknown female, is that correct?  
A. No, it's not correct.
- Q. Then what are you saying there?  
A. I said I might have based it upon that.
- Q. You based it on supervision that the conversation was unnecessary?  
A. I didn't say it was unnecessary to necessary. I just based it upon the conversation, the length of the conversation he had with said female and I forewarned Ptl. Maddaloni in case he would continue a conversation with said female which might be unnecessary conversation in the future, in the next step.
- Q. But, in the same thing you are now inferring that you believe that the conversation that he had with this female was unnecessary.  
A. There is no such mention in my report that said conversation that Ptl. Maddaloni had prior to me warning him of the Manual of Procedures that it was unnecessary.
- Q. Based on your report and based on your testimony, Sergeant Matthaei, you certainly infer most distinctly that in your mind Ptl. Maddaloni's conversation with this unknown female was an unnecessary conversation.  
A. I don't interpret it as such. It doesn't make a special reference to the female. It was with anyone.



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- Q. Paragraph three is dependant upon paragraphs one and two where we're talking about the conversation with other persons. We are now talking about a conversation between an unidentified female and Ptl. Maddaloni and now we are dealing with a reminder, a reschooling of the conversation regarding unnecessary conversations with people while on duty. I contend that one follows the other and in your mind at this time according to your testimony and report you believe this was an unnecessary conversation, although you heard no conversation what so ever between the female and Ptl. Maddaloni.
- A. Right.
- Q. Were you present when Ptl. Maddaloni went on meal?
- A. Yes sir.
- Q. As field sergeant what was his assigned meal period that day?
- A. I believe it was 7:30 to 8:30.
- Q. Let the record indicate that Sergeant Matthaesi had knowledge that Ptl. Maddaloni's meal period was at 7:30PM and that Ptl. Maddaloni did go to meal at 7:30PM. At 7:30PM, subsequent to Ptl. Maddaloni calling off for meal, you stated in paragraph three of your report that you observed Ptl. Maddaloni in the company of above mentioned female in the parking lot where they engaged in conversation for a period of fifteen minutes.
- A. That's correct.
- Q. To your knowledge, is that any violations of the Rules and Procedures?
- A. To my knowledge no, if he is on meal.
- Q. When they were engaged in this conversation were they standing or sitting?
- A. Standing.
- Q. Were they engaged in any embraces?
- A. No.
- Q. Did they hold each others hands?
- A. No, I did not observe them.
- Q. Did they kiss each other?
- A. No.
- Q. Were you in full view of Ptl. Maddaloni?
- A. Yes sir.
- Q. Was Ptl. Maddaloni in view of you?
- A. I imagine that he observed me and Captain Nelson.
- Q. Where were you standing at this time?
- A. We were in the car 752 at the time, and we were in the parking lot approximately 150 feet, 200 feet away, near the exit of the parking lot. I believe that's Atlantic Avenue.
- Q. At the time you didn't hear any conversation between Ptl. Maddaloni and the unidentified female, did you?

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A. None what so ever.

Q. You stated in your report that 11:55PM, subsequent to your leaving Flatbush Avenue Station, were you informed by anyone that Ptl. Maddaloni had called off sick?

A. Yes.

Q. Who informed you of this?

A. The desk lieutenant.

Q. Did he inform you of this or was he asked this? Did you ask the question did Maddaloni go off sick?

A. I do not recall.

Q. Do you recall the reason he went off sick?

A. I believe in the report that he submitted over the phone, going over the D/S he had an upset stomach.

Q. It states here at 11:55, this is again referring to your report, at 11:55PM a verification call was made to Ptl. Maddaloni's home. A female identified as Mrs. Maddaloni stated that Mr. Maddaloni had not returned home as of that time. Do you know who made this verification call?

A. I did.

Q. When you made this verification call, did Mrs. Maddaloni have any knowledge of Ptl. Maddaloni on his way home sick? Did she say anything?

A. Mrs. Maddaloni stated to me that Ptl. Maddaloni had called her earlier in the evening, approximately 8:50 or 9:00. I don't recall the exact time and that he had informed her that he was coming home and he was sick, but he had at that time that I called, he had not arrived there as of yet.

Q. But his wife had full knowledge of this?

A. His wife had knowledge of him being sick.

Q. I ask you now, Sergeant Matthaei, it was your opinion, I don't mean to be fitious, but in your opinion as stated in your report you believed that Ptl. Maddaloni was in violation of chapter 2, page 12, paragraph 35.0 of the Rules and Procedures, is that correct?

A. I don't have the Rules and Procedures. I don't recall the whole Rules and Procedures.

Q. Would you just answer the question.

A. I can only answer it if I can refer to the Rules and Procedures.

Q. I'm referring to your report. Let the record indicate I'm reading from the report of Sergeant Matthaei, paragraph 6 of the report of May 24, relating to an incident of May 18, which reads as follows: "In view of the foregoing, it appears that Ptl. Maddaloni is in violation of the LIRR Manual of Procedure, chapter 2, page 12, paragraph 35.0 and AR-7, paragraph 32.3" Now, I would also like to state, and let the record show that Ptl. Maddaloni was not charged with that section. He was charged with page 11,



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paragraph 27.0 of the Rules and Procedures. Now, the trial officer if he would be good enough to read into the record the charge, 27.0 on chapter 2, page 11 which Ptl. Maddaloni is being charged with and also read into the record chapter 2, page 12, paragraph 35.0 which Sergeant Matthaei states was appeared to be in violation of.

CAPTAIN SLATTERY

Sergeant Matthaei submitted a report and in the chapter you read in view of the foregoing it appears that Ptl. Maddaloni is in violation of the LIRR Manual of Procedure, chapter 2, page 12, paragraph 35.0 and AR-7 paragraph 32.3. Ptl. Maddaloni was subsequently not charged with these charges. He was subsequently charged on as stated page 11, paragraph 27.0. There are the only charges he is up on today. Paragraph 35.0 on this is merely Sergeant Matthaei's recommendation which was over ruled by a higher authority.

MR. MAUL

May I ask who the higher authority was who charged this charge?

CAPTAIN SLATTERY

It could have been Captain Nelson, or it could have been Captain Cook. It was a recommendation they found a charge which was more applicable to the alleged offense.

MR. MAUL TO SERGEANT MATTHAEI

- Q. In your opinion, Sgt. Matthaei, when you observed this and this is testimony from May 28, that you felt that chapter 35.0 paragraph 2, page 12, of the Rules and Procedures which reads as follows: "Any written or oral report must be accurate as to facts. A member of the force who makes a false statement or one which is intended to be misleading, or who fails to state the truth when it is known to him, shall be subject to disciplinary action." Based on your observations on May 18, this was your belief, as a supervisor that Ptl. Maddaloni was in violation, is that correct?
- A. I believe so, yes.
- Q. And were you the one who made this charge?
- A. Yes.
- Q. Did anyone above the rank of sergeant have conversation with you, Sergeant Matthaei, as of changing the charge from 35.0 to 27.0 ?
- A. No.
- Q. Did they further question you?
- A. It's the first time I heard it.
- Q. Sergeant Matthaei, I'm going to read the charge that Ptl. Maddaloni is being charged with, in lue of the charge that you believed he should be charged with, 35.0 on chapter 2 he has been charged with 27.0 of chapter 2, which reads as follows:

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"Failure to comply with the Manual of Procedure or with lawful orders of a superior, neglect of duty or interference with others in the performance of their duties, or any other act or omission prejudicial to efficiency or discipline, shall constitute misconduct." On May 18, did you observe anything that Ptl. Maddaloni did which would justify that charge I just read, in your opinion?

A. In my opinion he could be charged with either one of them.

Q. I did not ask that question. I said in your opinion do you still believe that he should be charged with 35.0?

A. In my opinion I think the present charges are application.

Q. You didn't answer my question. Do you still believe that based on your observations on that date and your recollection on that date, do you still believe that is the charge he should be charged with?

A. No.

Q. You don't?

A. No.

Q. Why do you now change your mind?

A. Because I see that the other one he is presently charged with is more applicable to the incident that happened.

Q. And yet Ptl. Maddaloni was brought up on charges based on your recommendation, based on 35.0 of the Rules and Procedures.

CAPTAIN SLATTERY

He was not brought up on that. That is not the basis of the charges. The basis for the charges was the body of this report, not Sgt. Matthaei's recommendation on the bottom.

MR. MAUL TO SERGEANT MATTHAEI

Q. Let me ask you questions on the original recommendation of the charge. Did Ptl. Maddaloni make any false oral or written statement to you on May 28 at Flatbush Avenue Station?

A. No, he did not to me.

Q. Or did he make a statement intended to be misleading?

A. In my report it's my belief.

Q. I asked you a question here and I want a direct answer. Did he make any statement to you which was misleading or false?

A. Make any statement to me, personally, no.

Q. To your knowledge, did he fail to state the truth on May 18?

A. To my knowledge?

Q. To your knowledge.

A. Yes.

Q. In what way did he fail to tell you the truth?

A. It is my belief that he wasn't sick.



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Q. What do you base this on? It is your belief that he wasn't sick?  
A. What did I base this on? On all the circumstances leading up to his calling off sick.

Q. Sergeant Matthaesi, do you have any medical background?  
A. No, I do not.

Q. What time did you leave Flatbush Avenue Station?  
A. Approximately a quarter to eight.

Q. Your report shows that at approximately 8:25 Ptl. Maddaloni called off sick.  
A. Right.

Q. Do you believe it's possible for a man in a half hour to become sick?  
A. It's possible.

Q. I take it from this report, this charge you made against Ptl. Maddaloni was based on an opinion of yours, not by any factual observation on your part, is that correct?  
A. Not entirely.

Q. What do you mean by that?  
A. Of course it was partly made up on some facts that I did have.

Q. Would you relate for the record what facts you have?  
A. My conversation prior to him calling off sick with the unknown female.

Q. Which stated what?  
A. Which stated that Ptl. Maddaloni was going to take her home.

Q. Did the unknown female state to you at any time what time Ptl. Maddaloni was going to take her home?  
A. Yes, she did. She didn't say a specific time. The conversation between me and the female was that she lived in Ronkonkoma and that Steve was going to take her home. Then I stated to her, you will have a long wait. He gets done at 12:00. She stated No, I don't have to wait that long. He's going to take me home before that.

Q. She stated that to you?  
A. Yes, she did.

Q. Where was Captain Nelson at this time?  
A. Standing next to me.

Q. Did you observe Ptl. Maddaloni leave Flatbush Avenue Station?  
A. No.

Q. Did you observe Ptl. Maddaloni leave with the unidentified female?  
A. I wasn't there when he called off sick.

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- Q. Did you observe Ptl. Maddaloni after you left Flatbush Avenue Station at any time that day?
- A. No, I did not.
- Q. And you made the verification call to his wife?
- A. I did.
- Q. And she stated that Ptl. Maddaloni had called and said he was on his way home, because he was sick?
- A. I believe she stated that around a quarter to nine or 9:00 he had called her and told her that he was on his way home.
- Q. What day of the week was this?
- A. I don't recall off hand. I think it was a Thursday.
- Q. Did you observe Ptl. Maddaloni during his full meal period from 7:30 to 8:30?
- A. No, I did not.
- Q. When Ptl. Maddaloni went on meal, for how long afterwards did you observe him?
- A. For approximately 15 minutes.
- Q. Which would be approximately 7:45?
- A. Right.
- Q. And then you departed Flatbush Avenue Station?
- A. That's correct.
- Q. Do you have any knowledge that Ptl. Maddaloni subsequently had anything to eat?
- A. I did not see him eat.
- Q. That's because you were gone. He had 45 minutes remaining on his meal period.
- A. Right.
- Q. Could you explain why you believe Ptl. Maddaloni was in violation of 35.0, the charge that you initially recommended?
- A. Because I believe that Ptl. Maddaloni in my opinion, that he called off sick for the sole purpose of escorting the female to Ronkonkoma based upon the conversation I had prior to him call off sick.
- Q. But, you have no physical evidence?
- A. I have not.
- Q. So, everything in your report of May 24 based on that charge is opinion on your part, is that correct?
- A. Not everything in my report.
- Q. I stated regarding that charge, 35.0.

CAPTAIN SLATTERY

He is not being charged with 35.0/



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MR. MAUL

I'm talking about a report of May 24.

CAPTAIN SLATTERY

I believe there is other charges in that.

MR. MAUL

AR-7 we made a motion on that. I'm referring now to 35.0. You're charging him with 35.0 on May 18 in your report of May 24 is solely based on your opinion.

SERGEANT MATTHAEI

Like I said before, it was based partly on opinion and based partly on facts that I had, as outlined in the report.

MR. MAUL TO SERGEANT MATTHAEI

- Q. As far as I can see you haven't introduced any facts.  
A. The facts were that I had a conversation with someone who stated that she was going to go. That was fact to me. I was informed that she was going to be taken to Ronkonkoma before his 12:00 tour of duty was finished.
- Q. This unidentified female, had you ever see this unidentified female prior to May 18?  
A. I never did.
- Q. Do you know her name?  
A. I recall that I did.
- Q. Did you know it on May 18?  
A. Not at this point.
- Q. May I ask why you yourself engaged in conversation with the female?  
A. I didn't engage her in conversation. She engaged me in conversation.
- Q. Did she come over to you or did you go over to her?  
A. I was standing right there.
- Q. With Ptl. Maddaloni?  
A. With Ptl. Maddaloni and he was instructed to make a report and everything was right there, including her.
- Q. Did you respond to her conversation? Did you speak to her?  
A. Yes, I did.
- Q. Then, you, too, had conversation.  
A. I surely did.
- Q. Did you consider that necessary conversation that you had with this female?  
A. I was asked questions and I answered them.

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Q. Now, who else was on duty with Ptl. Maddaloni at that time?  
A. I believe it was Ptl. Seiferheld.

Q. Where was Ptl. Seiferheld at that time?  
A. He was walking around the main waiting room.

Q. In close proximity of yourself and Captain Nelson?  
A. No he was not. He was in the main part of the waiting room.

Q. Did there come a time where Ptl. Seiferheld came over to you and Captain Nelson?  
A. Yes. Ptl. Seiferheld came over to me and subsequently Captain Nelson joined in conversation with him.

Q. Was the unidentified female there, also?  
A. No.

Q. Where did the unidentified female go when Ptl. Maddaloni went up to make the report?  
A. After she had conversation with me she sat in the waiting room on the bench.

Q. And at that time you had conversation with Ptl. Seiferheld?  
A. I did.

Q. Did you ask Ptl. Seiferheld anything regarding the unidentified female?  
A. No, I did not.

Q. To the best of your recollection, Sgt. Matthaesi, while you were having this conversation was Ptl. Seiferheld held in full view of you at that time?  
A. I don't recall.

Q. Did you see him?  
A. I didn't look for him.

Q. Did you see him?  
A. I had seen Ptl. Seiferheld in the main waiting room, but at the time I had the conversation I did not particularly watch where he was, but I knew he was not in my proximity.

Q. When you first walked into the station and observed Ptl. Maddaloni engaged in conversation with this unidentified female at the time, did you also observe Ptl. Seiferheld?  
A. Yes, I did.

Q. To your knowledge, did Ptl. Seiferheld look in your direction at that time?  
A. I do not recall.



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- Q. Sgt. Matthaei, when you entered Flatbush Avenue Station, did you walk up to Ptl. Maddaloni or did Ptl. Maddaloni look in your direction, leave the unidentified female and walk up to you?
- A. No.
- Q. What happened? Did you walk up to him?
- A. We walked up to him.
- Q. While he at no time turned and walked in your direction?
- A. No.
- Q. Did he see you?
- A. Yes, he did.
- Q. Did he salute Captain Nelson?
- A. He made one salute when we went in together.
- Q. Was Captain Nelson in uniform?
- A. No, he was not.
- Q. Were you in uniform?
- A. Yes, I was.
- Q. Sergeant, I just have a couple of more questions. I refer again to your advising Ptl. Maddaloni not to engage in unnecessary conversation. At any time on May 18, did you hear or overhear any conversation with Ptl. Maddaloni and this unidentified female?
- A. No, I did not.
- Q. So, therefore, you don't know if it was necessary or unnecessary.
- A. I stated that before.
- Q. Would you state it again, please?
- Q. I don't know if it was necessary or unnecessary. I have no recollection.
- Q. As you entered this station and observed Ptl. Maddaloni in conversation with this unidentified female, was Captain Nelson with you?
- A. Yes, he was.
- Q. At that time, prior to going over to Ptl. Maddaloni and the unidentified female did Captain Nelson say anything to you regarding the matter?
- A. Yes, he did.
- Q. What did he say?
- A. I don't recall exactly what he said.
- Q. Well, do you recall something he might have said?
- A. I really couldn't tell.
- Q. What he said, was it favorable, unfavorable, sarcastic, or unsarcastic?
- A. I really don't know.

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- Q. Sergeant Matthaui, on May 18, Ptl. Maddaloni was ordered to make a report on another matter?
- A. Right.
- Q. And where did he go to make that report?
- A. To the police room.
- Q. Directly?
- A. Yes.
- Q. Did you at any time enter the police room while Ptl. Maddaloni was up in the police room?
- A. I think I did, yes. I think I came in to sign the blotter. I'm not sure what it was for.
- Q. Your report, Sgt. Matthaui, shows that approximately 7:15 you observed Ptl. Maddaloni?
- A. Approximately.
- Q. At 7:15 you observed Ptl. Maddaloni having conversation with an unidentified female and approximately 7:26, this is 11 minutes later, Ptl. Maddaloni returned from making this report, from the police room upstairs on the upper level?
- A. It was approximate times. It could have been 7:10.
- Q. Between your original observation at 7:15 and Ptl. Maddaloni's going upstairs at approximately the same time that you observed him at approximately 7:15 having conversations with the unidentified female and that observation according to your report was for a period of five minutes which would make it approximately 7:20. Ptl. Maddaloni was then ordered to make a report on another matter. Six minutes later he returned to the floor so sometime during that six minutes you left the main waiting room while having conversations with the unidentified female, went upstairs, to the police room and returned, is that correct?
- A. That was approximately the times. Like I stated, it could be 7:10, 7:15. It was approximate time that I put down. I did not exactly look at my watch.
- Q. According to your report the approximate time would be 6 minutes. In that six minutes you had conversation with the unidentified female, walked upstairs to the upper level, had conversation with Ptl. Maddaloni, signed the District Log and then returned down so within the six minutes your conversation with this unidentified female must have been a short span of time?
- A. Like I said before you say six minutes. It could have been 10 minutes. It could have been twelve minutes between the time in my report as it is stated there is approximate to the best of my recollection, making this report which was something like 6 or 7 days later.
- Q. I see that. I also have a question on that. Why was this report not made out on the night of May 18? Why was it made seven days later?
- A. I was ordered to make this report.
- Q. By whom?
- A. By Captain Nelson.



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- Q. So, on May 19 did you have any intention of charging Ptl. Maddaloni yourself?
- A. It was held in abeyance by the Captain to accumulate the facts. At that time there was a decision made and I was instructed to hold this in abeyance until the facts were more clearly attained. At the time on the 24th I was instructed to make such report.
- Q. Do you have your memo book for May 18?
- A. No, I do not.
- Q. Can you get your memo book for May 18?
- A. I have it at home. My rings and times should be on the blotter.
- Q. Do you have any entries in your memo book regarding the incident at Flatbush Avenue?
- A. Not that I recall.
- Q. Then, it would be safe to assume that since there was no entry made in your memo book of May 18 that you as a supervisor at the time did not lend much credence to what you had observed.
- A. No, I did not say that. I said it was discussed that evening and I was instructed to hold everything in abeyance.
- Q. Then, when you wrote this report on May 24 the only thing you had to go by was your recollection?
- A. That's right. That's why I put on the report approximate times.
- Q. And you had nothing to refer to in your memo book?
- A. No, only my recollection of what happened and partly of records which is the D/S slip and the time that I was in Flatbush Avenue.
- Q. When you left Flatbush Avenue Station with Captain Nelson at approximately 7:45, where did you proceed to, then?
- A. Jamaica Station.
- Q. During the trip from Flatbush Avenue Station to Jamaica Station, did you and Captain Nelson have conversation regarding the incident at Flatbush Avenue Station?
- A. At that point there was actually no incident.
- Q. Did you have conversation regarding anything that happened at Flatbush Avenue Station?
- A. We had some conversation, yes, but at that point to the best of my recollection nothing of any nature had expired that would warrant charges to be brought against Ptl. Maddaloni. At approximately 8:25 he called off sick.
- Q. Did Captain Nelson at any time during the trip from Flatbush Avenue Station to Jamaica Station indicate in any way that he was contemplating or going to charge Ptl. Maddaloni?
- A. No, at that point he did not.
- Q. Did he mention at all during that trip from Flatbush Avenue to Jamaica Station Ptl. Maddaloni?
- A. Yes, we discussed him.

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- Q. What did you discuss?  
A. The nature of the report that I had requested him to prepare.
- Q. But you did not discuss anything or did you discuss anything of what you observed on May 18 at Flatbush Avenue when enroute from Flatbush Avenue to Jamaica?  
A. Yes. We discussed Ptl. Maddaloni's activities.
- Q. What did you discuss?  
A. Our observations we made at the time.
- Q. Did you discuss any opinion?  
A. No. At the time we had no opinion what so ever.
- Q. What did Captain Nelson say?  
A. Nothing, we just talked about Ptl. Maddaloni and the female because we pulled out of Flatbush Avenue and told me to pull the car to the end of the parking lot which I stated where we observed him talking to the female.
- Q. Did either you or Captain Nelson have a pair of bonoculars?  
A. No.
- Q. Did you sign Ptl. Maddaloni's memorandum book?  
A. I believe I did that night, yes.
- Q. Did you in his memo book instruct him regarding unnecessary conversation?  
A. I did not.
- Q. But, you did so in your report.  
A. I did it verbally.
- Q. But, you did not enter it in the memo book.  
A. There was no reason for it.
- Q. Why was there a reason to talk to him about it?  
A. Because I had an idea that something was going to happen, based on the information I had from the female.
- Q. Should you not then have put that in this memo book?  
A. No, because nothing expired at that time.
- Q. Did Captain Nelson sign his memo book?  
A. I do not recall.
- Q. Did he sign the District Log?  
A. I don't think so. I think he made me sign the District Log.
- Q. With his name?  
A. I imagine so. I don't recall. Sometimes he tells me to place his name on it.
- Q. Now, it is brought to my knowledge that the District Log the other day from Flatbush Avenue Station was taken from Flatbush Avenue Station and replaced with a new one. I ask the trial officer to ask Captain Schaefer where that District Log is



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CAPTAIN SLATTERY

What bearing does that have on this trial here right now. Captain chaefer has no bearing on this trial.

MR. MAUL

I want to see for the record if Captain Nelson left the waiting room at any time to go up to the police room.

CAPTAIN SLATTERY

We can bring it out in direct testimony from Captain Nelson who will be our next witness.

MR. MAUL

Since the District Log is taken apparently for purposes of this trial

CAPTAIN SLATTERY

Apparently it wasn't taken for this trial, because it hasn't been introduced as evidence.

MR. MAUL

Well, we don't know that yet.

CAPTAIN SLATTERY

Be assured.

MR. MAUL TO SERGEANT MATTHAEI

Q. Sgt. Matthaei, did you sign Captain Nelson's name based on his orders?  
A. I don't recall. Like I stated before, I don't know if I did or not.

Q. I have no further questions of Sergeant Matthaei.

CAPTAIN SLATTERY

Sergeant Matthaei, you are dismissed. We have here a notice of claim form which employees use when they call off sick for the date in question. It's for S. Maddaloni, 248 Lincoln Avenue, St. James. Date called 5/18/72. Time called 8:25PM. The reason for his absence was upset stomach - unable to continue tour and expected date of return, will call. It is signed by Lt. Hendry. This is a standard form of a patrolman who calls off sick while on duty.

MR. MAUL

May I see that? With reference to the notice of claim that Captain Slattery just read into the record, let the record indicate that notice, that nowhere does it say Ptl. Maddaloni claimed anything as far as financial consideration. All he claims is that he was sick. This is a standard form made out by the Long Island Rail Road Police Department when a person goes sick, the claim being that he is sick, not claiming any compensation for sick leave.

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CAPTAIN SLATTERY

In this case he didn't claim any compensation because there is a seven day waiting period but there same forms are used had he been off for eight days.

MR. MAUL

Number ten on this notice of claim states that Ptl. Maddaloni will return on May 21, which is three days.

CAPTAIN SLATTERY TO PATROLMAN MADDALONI

Q. What are your relief days when you are working that job.  
A. Friday and Saturday.

CAPTAIN SLATTERY

May 18 was a Thursday and Friday and Saturday were relief days.

MR. MAUL

So, there is only one working day involved in this thing.

CAPTAIN SLATTERY

Mr. Maul, on the basis of your objections to AR-7, on paragraph 32.3 which reads, "Carrier reserves the right to investigate any or all employees calling off account sickness by telephone or other means available to Carrier. If a representative of the Carrier calls by telephone, or in person, at the place where the absent employee advised, under 32.3 hereof, that he could be found and cannot contact him, the absent employee will be subsequently advised by certified mail of Carrier's inability to contact him and he will be deemed to be absent without leave unless he can, within seven (7) calendar days from date of the letter's certification, prove to Carrier's satisfaction that he was unable to respond to such inquiry. Unless such employee complies with these provisions he will not be granted sick leave and will be subject to appropriate disciplinary action in accordance with the provisions of the existing agreement."

MR. MAUL

Sick leave in that means sick leave, paid sick leave.

CAPTAIN SLATTERY

The basis of why I'm denying your motion to disallow this charge is that while on this particular instance Ptl. Maddaloni was off one working day, this rule still holds facts and is pressed in this department that when you call off sick you will give a number, let the desk know the number you will be at and if you go from that number you will be advised of the whereabouts when you're off sick. While Ptl. Maddaloni was only off one day thus not making any monetary claim, this is one day. Had he been off seven more days he would be submitting a claim from the first day on. When you're off sick you are, it is your responsibility to make your whereabouts known to give the number and give that number and if you leave that phone you indicate to the desk officer.



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MR. MAUL

In reference to that we again object to the charges as being not responsive to the charge.

CAPTAIN SLATTERY

I just gave your reasons. Your objection is over ruled.

MR. MAUL

If I may continue, we take exception to your over ruling our objection and again state that this AR-7 is not part or partial to the Rules and Procedures of the Long Island Rail Road Police Department. It is strictly regarding sick leave pat. Ptl. Maddaloni did not receive any sick leave pay nor did he make any claim for sick leave pay. He left a telephone number where he could be reached and he did not leave that telephone where he could be reached, in that the phone call was made prior to him returning home where his wife was expecting him and had full knowledge that he was coming home. When Ptl. Maddaloni finally did return home he remained home and did not leave that area. I think the charge is just deficient on its face. It doesn't show that he left the place where he said he was going to be. The phone call was made prior to him returning home; therefore, he couldn't have been there and again we speak now for John Mahoney, Business Manager or Local 808 of the Teamsters who is now owner of his contract and it is his decision that AR-7 applies only when a member submits a request or a notice of claim for financial compensation for sick leave, which is not the case here.

CAPTAIN SLATTERY

On that we disagree.

MR. MAUL

And, I again ask for a legal opinion which I asked for on May 31 and haven't yet gotten.

CAPTAIN SLATTERY

Did you submit a letter as you were directed to the Law Department?

MR. MAUL

We brought this to the attention of the Training and Administration Officer, Captain Schaefer, and at that time the trial officer was Captain Nelson.

CAPTAIN SLATTERY

You're seeking a legal opinion. I suggest you contact the Law Department.

MR. MAUL

The owner of the contract now, John Mahoney, Business Manager, states that AR-7 is for compensation only, for verification that a person has been sick for seven days so that he can begin

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after the seven days collecting his sick leave benefits.

CAPTAIN SLATTERY

That, as you state, is Mr. Mahoney's opinion.

MR. MAUL

Since he is the holder of the contract, yes.

CAPTAIN SLATTERY

That is not the opinion of the trial officer. I will now call Captain Nelson.

CAPTAIN SLATTERY TO CAPTAIN NELSON

Q. Will you identify yourself?

A. George Nelson, Captain, Long Island Rail Road Police Department.

Q. Captain Nelson, were you on duty on May 18, 1972?

A. Yes, I was.

Q. What hours were you working that day?

A. I believe that day it was in the afternoon. I think it was about 2:00PM to 10:00PM, because I came in earlier that day. Usually it's 4 to 12.

Q. Alright, I have here a report to L. J. Fox, Director-Security from Captain George Nelson, Subject, report of Sgt. Matthaai involving Ptl. Maddaloni on 5/18/72, comments concerning same. This is a copy of that report, apparently a carbon copy of that report for verification purposes. Is this the report you submitted?

A. Yes, that's the report I submitted that day.

MR. MAUL

Let the record indicate that we have read the report of Captain Nelson dated the 24th of May regarding an incident at Flatbush Avenue.

CAPTAIN SLATTERY TO CAPTAIN NELSON

Q. Captain Nelson, would you read that report for the record?

A. TO: L. J. Fox, Director of Security DATE: 5/24/72 FROM: Captain G. H. Nelson SUBJECT: Report of Sgt. Matthaai involving Ptl. Maddaloni on 5/18/72, comments concerning same.

As this officer was present at Flatbush Avenue on subject date when woman admitted she was going to be taken home by our patrolman on duty, I will submit my comments on this report.



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I feel the charge most serious is contained in chapter #2, constituting misconduct, as we had to take a man off patrol to cover his vacancy, and he left his partner alone until such time as a relief arrived at Flatbush Avenue Station. Chapter #2, page #11, paragraph 27 is covered in regard to this misconduct. Captain GW Nelson

Q. Now, this report, is it in response, after you read a report previously submitted by Sgt. Matthaai which states here this officer was present? The report of Sgt. Matthaai involved Ptl. Maddaloni. Were you present at Flatbush Avenue Station and also you read Sgt. Matthaai's report which Mr. Maul has a copy. I ask you if this is the report that you based your comments on?

A. Yes, that and the circumstances of the day.

Q. Mr. Maul raised a question before. There is a difference between Sgt. Matthaai's recommendations on this report. He recommended it appears that Maddaloni is in violation of Long Island Rail Road Manual of Procedures chapter 2, paragraph 35.0 and AR-7 paragraph 32.3. In your report your recommendations were that the charge be paragraph 27.0 which is the violations he was subsequently charged with. Now, what caused the charge from Sgt. Matthaai's recommendation or suggestion?

A. The original report as such is sent into our headquarters with the Sgt's recommendations of what he feels and also I as Captain that day express my feeling regarding the matter and I felt that it constituted misconduct and as such I put it down and if another supervisor had been there he might have entitled it another way.

CAPTAIN SLATTERY TO MR. MAUL

Q. Does that clarify the matter, Mr. Maul?

A. It clarifies it to a point, that it is a matter of interpretation, not observation. Sgt. Matthaai observed one thing and believed Ptl. Maddaloni should be charged with one thing and Cpt. Nelson observed another thing.

Q. Well, it could be interpretation or that Sgt. Matthaai is a sergeant and Cpt. Nelson is a captain.

A. That is demeanor to Sgt. Matthaai.

Q. No. If you're a captain you're around a little longer than a sergeant.

A. That's a matter of interpretation.

CAPTAIN SLATTERY TO CAPTAIN NELSON

Q. Captain Nelson, will you state your observations at Flatbush Avenue Terminal?

A. On the date in question, which would be 5/18/72, Sgt. Matthaai and I made an inspection of Flatbush Avenue Station, walked in there through the office leading in from the yard and observed Ptl. Maddaloni talking to a young lady, at the stairs leading from the street in. We stood and waited and he talked to her for a few more minutes at which time Sgt. Matthaai then engaged Ptl. Maddaloni in conversation and Ptl. Maddaloni then went upstairs. The woman then stood there and talked to Sgt. Matthaai and I and this happened to be around 7:15 and she stated she missed her train to Ronkonkoma but she wasn't worried because

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Steve was going to drive her home. This was in the presence of Sgt. Matthaai and myself, and I wondered how he would be able to drive her.

MR. MAUL

I object to I wonder how. I move that the first part be stricken from the record from I wonder how.

CAPTAIN NELSON'S ANSWER

I could see no way that that could be possible due to the fact that this was 7:15PM and Ptl. Maddaloni's duty is over at 11:50 at night, when he is relieved. The woman then walked away and sat in the main waiting room and said she then said I'll have to call him up and tell them I'll be on a later train or something to that affect. She went to the telephone. I was not present. I understand that Sgt. Matthaai had words, but I was not present during this, so I could not state what the words were. We parked on the other end of the yard. This was around 7:30 or 7:35 and Ptl. Maddaloni went on meal period 7:30. We observed him in the yard with the young lady for 15 minutes. We then left Flatbush Avenue and went back to headquarters. I then subsequently found out that Ptl. Maddaloni went off D/S through our records, I believe it was 8:25, and I also was not present when Sgt. Matthaai called up Ptl. Maddaloni's home so it states that he called him at home but I was not present at that call. He called him at 11:55 and Ptl. Maddaloni was not home at that time. That was roughly two and a half hours later.

MR. MAUL TO CAPTAIN NELSON

- Q. Captain Nelson, when you entered the station with Sgt. Matthaai, you stated that you observed Ptl. Maddaloni talking to a lady?
- A. Correct.
- Q. How long did you observe this?
- A. A few minutes, say seven or eight minutes, approximately.
- Q. Did there come a time when you and Sgt. Matthaai walked over to Ptl. Maddaloni who was having conversation with this woman?
- A. Yes.
- Q. Did there come a time when Ptl. Maddaloni was instructed to go upstairs and submit a report on another matter?
- A. Yes, I believe that Sgt. Matthaai gave him such orders.
- Q. Did there come a time when there was a conversation between Sgt. Matthaai and this unidentified female?
- A. Yes.
- Q. Were you present during this conversation?
- A. Yes, I was. I was present at portions of it and portions I wasn't. I was present when she made the comment that she missed her train and Steve was going to drive her home. I checked the timetable later and the train was 7:08PM. I was not present at all the conversation at one time Sgt. Matthaai was not present when the girl was talking to me regarding some matters.



## WARD EXHIBIT D

TRIAL OF: S. MADDALONI, LONG ISLAND PARK ROAD PATROLMAN

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- Q. In this report of May 24 regarding the May 18 incident you stated in your first paragraph and I will quote out of context "woman stated that she was going to be taken home by our patrolman on duty". Did this woman say Ptl. Maddaloni was going to take her home while he was on duty?
- A. No. You are taking that out of context. That meant referring to Ptl. Maddaloni about whom the report is made out. That interpretation is Ptl. Maddaloni is on duty within the confines of that report.
- Q. You're not indicating in here then, am I safe in assuming you're not indicating here that woman said he was going to take her home while he was on duty?
- A. No. I'm just identifying Ptl. Maddaloni in that report. Nothing in that report stated that he would take her home while on duty.
- Q. Did the unidentified woman at any time state what time Ptl. Maddaloni was going to take her home?
- A. No.
- Q. Can you, for the record, recall what the woman did say to you while you were in the presence while Ptl. Maddaloni was making his report upstairs in the Police Room. Is it a matter of fact that you and Sgt. Matthaef had a conversation with this unidentified woman?
- A. We were standing at the stairway and that woman never left the stairway. In fact, that woman had little conversation with me because her first remark was that I'm told that you're a very mean man. It seemed to me that she didn't have any real intentions of talking to me.
- Q. I move that that be stricken as immaterial.
- A. Mr. Maul, you asked me what the woman said to me.
- Q. I asked you about the conversation.
- A. And I gave you the conversation.
- Q. It is immaterial to the charges as against Ptl. Maddaloni.

CAPTAIN SLATTERY

You asked a general question

MR. MAUL TO CAPTAIN NELSON

- Q. What other conversation did this woman have to say to you?
- A. She names several other officers she had gone out with from our department.
- Q. Was Sgt. Matthaef present during all this conversation?
- A. Just portions of it. Not the part where she mentioned going with several of our officers. In fact, I'll rephrase that, two of our officers that she went with.
- Q. What else did this woman say to you, Captain Nelson?
- A. That is about the sum total of it, of the conversation.

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TRIAL OF: S. MADDALONI, LONG ISLAND RAIL ROAD PATROLMAN

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- Q. Based upon that you feel that Ptl. Maddaloni was in violation of the Rules and Procedures?
- A. Yes, I do.
- Q. Based upon just what you testified to?
- A. Based upon that, yes.
- Q. I'm not saying that, I'm saying on what you observed and what you heard, do you believe that Ptl. Maddaloni is in violation of the Rules and Procedures, paragraph 27.0, chapter 2, page 11?
- A. I most certainly do.
- Q. Simply on what you just testified to?
- A. Simply on the fact that at 8:25 Ptl. Maddaloni went D/S.
- Q. What relationship would that have to do with the charge, 27.0?
- A. The fact that the woman had already alissided the fact to us that she was going to be driven home.
- Q. At any time did Ptl. Maddaloni state to you he was going to drive this unidentified woman home?
- A. No, he did not.
- Q. Sgt. Matthaesi testified that you were with him at all times while he was having conversations with this young lady.

CAPTAIN SLATTERY

He didn't testify to that.

MR. MAUL

Except when he went up to sign the book.

CAPTAIN SLATTERY

He didn't state that either. You asked particular questions.

MR. MAUL TO CAPTAIN NELSON

- Q. I said that when he had conversations with this unidentified woman that you were with him, is that a fact?
- A. At this time when we were both there Ptl. Maddaloni was on duty and also Ptl. Seiferheld. I think we also talked to Ptl. Seiferheld and walked within a few feet either way. We could have appeared to be in ear shot and really were not. You know the station. I could have been within a few feet of him and not been cognisant of the circumstances. I believe in the majority of the time we were there we were in the presence of each other.
- Q. While Sgt. Matthaesi was engaged in conversation with this unidentified female
- A. At this time I would like to state I know the unidentified female. Her first name was Diana. I do not know the girls second name and I know she lives in Ronkonkoma because that is what she stated to me.
- Q. You don't know that as a fact.
- A. The girl told me. This is a fact.



## WARD EXHIBIT D

TRIAL OF: S. MADDALONI, LONG ISLAND RAIL ROAD PATROLMAN

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- Q. During this conversation with Sgt. Matthaef and this unidentified female, did you see Ptl. Seiferheld in the waiting room?
- A. Yes.
- Q. While Sgt. Matthaef was having conversations with the unidentified female, did you, at any time during that time have conversations with Ptl. Seiferheld?
- A. At this time I don't recall the conversation with him.
- Q. Sgt. Matthaef stated that except for the time that he went upstairs to sign the District Log you were with him at all times while he had conversation with this unidentified female.
- A. At this time, Mr. Maul, I would state that there really wasn't that much conversation with the other lady.
- Q. Can you tell me what she said?
- A. She said "I missed my train to Ronkonkoma". That was about 7:15. The train was 7:08, "but I'm not worried, because Steve is going to drive me home", or words to that affect.
- Q. She made no mention of the time Steve was going to take her home?
- A. She did not to the best of my recollection.
- Q. Did you have any knowledge of Sgt. Matthaef advising Ptl. Maddaloni of any provisions of the Rules and Procedures at that time?
- A. I believe this was not in my presence. This was while Sgt. Matthaef was alone. He told him not to have any unnecessary conversations with anyone. Now, I was not present.
- Q. Captain Nelson, you previously stated that Sgt. Matthaef had conversation with Ptl. Maddaloni on May 18 in Flatbush Avenue Station advising Ptl. Maddaloni not to have this female in his automobile is that correct?
- A. That is what Sgt. Matthaef stated. I wasn't present when he said it.
- Q. How do you know he said it?
- A. You asked me whether he had any conversation with Ptl. Maddaloni. Again, I repeat I wasn't there, but he did say to me in the car that he was waiting to see if the girl went in the car, because he advised Ptl. Maddaloni not to put her in the car and Ptl. Maddaloni then stated he is on meal period and he can do what he wants.
- Q. Did you observe at any time on May 18, Ptl. Maddaloni in his automobile?
- A. No, just opening the door to his car and then the girl was standing and then sat down on something right outside the door.
- Q. She was not in the car?
- A. No, she was not. I didn't see her.
- Q. Did you at any time overhear any conversation between the young lady and Ptl. Maddaloni?
- A. No. We were at least 150 feet away.

## WARD EXHIBIT D

TRIAL OF: S. MADDALONI, LONG ISLAND RAIL ROAD PATROLMAN

JUNE 7, 1972

Q. While in the station?  
A. No.

Q. Approximately what time did you leave Flatbush Avenue Station?  
A. I'd say around 7:35, 7:40.

Q. What time were you advised that Ptl. Maddaloni had gone off sick?  
A. I believe it was around 9:00 that night.

Q. And the record shows he had called off at 8:25?  
A. That's right.

Q. Captain, in that you are preferring the charges  
A. Correction, Sgt. Matthaei is preferring these charges.

Q. If that be the case, then Sgt.  
A. These charges are all being preferred by the department on the basis on the reports submitted by Sergeant Matthaei and myself.

CAPTAIN SLATTERY

In fact, the charges are preferred by H. C. Cook, Commanding Officer Patrol Division.

CAPTAIN NELSON

I was called as a witness.

MR. MAUL TO CAPTAIN NELSON

Q. In your opinion, then, Captain Nelson, based upon your testimony, how would you justify that Ptl. Maddaloni is being charged with 27.0 on page 11.  
A. That would all come under opinions. I would take all the facts and this in itself would form a conclusion. I feel in a conversation with the young lady and the fact that the young lady had still stayed there at approximately 7:35 or 7:40 with Ptl. Maddaloni being advised and at 9:00 that he had gone sick in my mind I felt there was a strong basis for that.

Q. But there is nothing factually that you could say you observed.  
A. You mean did I observe Ptl. Maddaloni driving the young lady anywhere?

Q. Yes.  
A. No, I didn't. I stated that before. The facts available to me and I did form my own opinion and conclusions and that is what I formed that he had left his post at 8:25.

Q. He called off sick at 8:25.  
A. That's right, Mr. Maul. According to the department records and you asked for my opinion.

Q. And when he called off sick nowhere does it show that he has denied the right to call off sick.  
A. No, he was not denied that. I also state that I was not even aware that he called off sick until approximately 9:00 that night which would be 35 minutes to late to do anything if I so desired.



## WARD EXHIBIT D

TRIAL OF: S. MADDALONI, LONG ISLAND RAIL ROAD PATROLMAN JUNE 7, 1972

- Q. When you left Flatbush Avenue Station with Sgt. Matthaef, you were in what car?
- A. At the time I don't remember the car.
- Q. Was it marked or unmarked?
- A. Unmarked.
- Q. Where did you proceed to after Flatbush Avenue Station?
- A. We then went back to drop Sgt. Matthaef to make meal relief, and I went to Jamaica.
- Q. You came to Morris Park first?
- A. No. I went straight to Jamaica. The sergeant went to Morris Park to make relief.
- Q. While you were enroute back to Jamaica Station with Sgt. Matthaef, did you have any conversations with Sgt. Matthaef regarding this incident of May 18 with Ptl. Maddaloni and this unidentified woman?
- A. Yes, we did discuss it.
- Q. Would you relate what you discussed regarding this incident on May 18 in the waiting room of Flatbush Avenue Station?
- A. At that time it was rather vague. We discussed as I said before the fact that he mentioned other names of the members of our department.
- Q. I'll object to any inference to any other members of the department. I am talking now directly of Ptl. Maddaloni.
- A. I cannot at this time take this conversation apart and break it down because first of all that was the 18th of that month. This is now the 7th of June. There are many conversations the sergeant and I had regarding that night. We did discuss how odd it seemed that at 7:15 that she would be given a ride home.
- Q. Well, she wasn't given a ride at 7:10 home.
- A. She stated that she was going to be driven home.
- Q. Did she state any time?
- A. No, she did not.
- Q. When you became aware of the fact that Ptl. Maddaloni had called off sick at 8:25, what did you do then?
- A. Nothing.
- Q. What did you instruct Sgt. Matthaef to do?
- A. At this time I don't remember. I don't believe I instructed him on anything.
- Q. Are you aware of the fact that Sgt. Matthaef called Ptl. Maddaloni's home?
- A. Am I aware of that? Yes, I certainly am.
- Q. Are you aware of the fact that Ptl. Maddaloni's wife was aware of the fact that he had called off sick and was on his way home?
- A. I don't know. This came in later conversation.

## WARD EXHIBIT D

TRIAL OF: S. MADDALONI, LONG ISLAND RAIL ROAD PATROLMAN

JUNE 7, 1972

I did not talk to Mrs. Maddaloni. Sgt. Matthea stated that she stated that she was told by her husband that he was on his way home.

- Q. Why do you feel, Captain Nelson, that number one, Ptl. Maddaloni failed to comply with the Manual of Procedures?
- A. Are you talking about the charge of misconduct?
- Q. I'm talking about the charges he's charged with, 27.0. We'll take it step by step. Why do you feel he failed to comply with the Manual of Procedure, on what basis?
- A. That Manual of Procedure is voluminous.
- Q. I'm reading verbatim from 27.0. I'm not taking this in cafeteria style. I'm going to take it step by step because it doesn't say and, it says or.
- A. Are we talking about 27.0?
- Q. If you will be responsive to my questions, without disertation, I would appreciate it very much. Why do you feel that Ptl. Maddaloni failed to comply with the Manual of Procedures?
- A. I cannot comply with that. There is no period right after that. You are taking it out of context. If you will read the whole paragraph I will break it down.
- Q. I'm not talking about the gramatical.

CAPTAIN SLATTERY

The interpretation on that failure to comply with the Manual of Procedure or with lawful orders of a superior neglect of duty or interference with others in the performance of their duties, or any other act or omission prejudicial to efficiency or discipline, shall constitute misconduct.

MR. MAUL

I have to quote this out of context or step by step because in law or anything else this is why I want my questions answered and this is why they are taking this direction.

CAPTAIN SLATTERY

Failure to comply with the Manual of Procedure. The answer to this is obvious. He violated Rule 27.0.

MR. MAUL

Why.

CAPTAIN SLATTERY

I will now read that rule to you.

MR. MAUL

I just want the first part.



## WARD EXHIBIT D

TRIAL OF: S. MADDALONI, LONG ISLAND RAIL ROAD PATROLMAN

JUNE 7, 1972

CAPTAIN NELSON

I felt his conduct was prejudicial to the good order of the department.

MR. MAUL

Now we're going cafeteria style again. We'll leave the first part out. Why do you feel that he failed to comply with the lawful orders of a superior?

CAPTAIN NELSON

I'll have to state again, there is a comma after that.

MR. MAUL

This is what I'm trying to get out. What part of that is he actually being charged with?

CAPTAIN NELSON

In my opinion neglect of duty or interference with others in the performance of their duties or any other acts or omission prejudicial to efficiency or discipline shall constitute misconduct. Solely within the confines of those words, Mr. Maul.

MR. MAUL TO CAPTAIN NELSON

Q. Now, for the record, what proof do you have what facts do you have that Ptl. Maddaloni on May 18 was guilty of neglect of duty?

A. What facts?

Q. Yes.

A. I have the conversation with the woman and the D/S slip at 8:25PM.

Q. And that constitutes neglect of duty, that a man called off sick at 8:25?

A. Yes, it does.

Q. Who would you factually justify that Ptl. Maddaloni interfered with others in the performance of their duties?

A. In the fact that we had to take a man off patrol to replace him.

Q. Wouldn't you normally do that if any other man called off sick?

A. If any other man called off sick I would not contain it in 27.0, if I did not feel there was a basis for that. That would just be a departmental emergency that crops up in any police department.

Q. As far as we're concerned this was a departmental emergency. Not only was he sick, but he phoned his wife to tell her that he was sick and on his way home and you had subsequent knowledge before May 24, before these charges were drawn up, so I'll ask again how did he interfere with others?

A. As I stated before, we were forced to replace him with another man off patrol due to his actions that night.

## WARD EXHIBIT D

TRIAL OF: S. MADDALONI, LONG ISLAND RAIL ROAD PATROLMAN

JUNE 7, 1972

- Q. You are saying in affect that Ptl. Maddaloni, when he called off sick for the sole purpose of taking the unidentified female home or somewhere else, is that correct?
- A. I did not say that at all. You're saying that, Mr. Maul. You're asking me to break down on what portions of this chapter I charged him. I stated that I believe he did take the young lady home. Whether he did take her home or any where else I am saying that he was not sick at 8:25PM. Without the conversation from the woman I might not have had those thoughts, but the conversation was had.
- Q. You are stating that he was not sick at 8:25PM?
- A. I don't believe he was sick, no.
- Q. Do you have any medical background?
- A. None at all, sir.
- Q. Did you observe him take this woman out of the station and put her into his car and take her home?
- A. No, I did not.
- Q. Do you think it's possible for a person to become sick while he's on duty?
- A. Definitely. It's happened many times in the past.
- Q. And if a person does become sick on duty, then he's not guilty of interfering with others in the performance of their duties, is that correct?
- A. If a man were sick and went home, I don't see how he possible could.
- Q. Do you have any knowledge of the fact that there was a possibility that Ptl. Maddaloni saw a doctor? Do you have any knowledge of that?
- A. You mean regarding that night or the particular day?
- Q. Yes.
- A. I have no knowledge that he saw a doctor.
- Q. You have no knowledge of whether he was sick or not?
- A. Up until the time I saw him, you mean?
- Q. Afterwards.
- A. No, I don't.
- Q. He could have been sick, could he not?
- A. He could have. Anything is possible, Mr. Maul.
- Q. How could you factually justify that Ptl. Maddaloni is guilty of any other act or omission prejudicial to the effeciency or discipline or misconduct, based on what you observed or heard on the 18th of May in the Flatbush Avenue Station?
- A. All the facts and everything that transpired from the time I came to Flatbush Avenue, the conversation the young lady had, the time that he went D/S and subsequently 11:55 when he was called at home by Sgt. Matthei. This constitutes in my mind the fact that 27.0, as I stated before any act or omission constitutes misconduct. I must earnestly state that he was guilty of misconduct.



## WARD EXHIBIT D

TRIAL OF: S. MADDALONI, LONG ISLAND NATL ROAD PATROLMAN JUNE 7, 1972

- Q. Yet you have not one single fact to justify this, is that correct?  
A. By facts you mean I didn't see him drive her out of the place?
- Q. Captain, I don't mean to be fictitious, but I'm sure you know what facts are. Do you have any facts what so ever to justify this charge?  
A. Justify the evidence presented here today?
- Q. Testimony, not evidence. There has been no evidence, only testimony. I believe, then, Captain Nelson that Ptl. Maddaloni is guilty of paragraph 27.0 chapter 2, page 11, based solely on your conclusions and your opinions of Ptl. Maddaloni on the evening of May 18?  
A.- No sir. There's also the conversation with the young lady as mentioned before.
- Q. You keep referring to that. I'm going to ask you what the conversation was.  
A. She stated she missed her train and Steve was going to drive her home.
- Q. Period?  
A. Yes.
- Q. Did you, at any time, see Ptl. Maddaloni embrace this young lady?  
A. No, I did not.
- Q. Did you, at any time, see Ptl. Maddaloni hold this young ladies hand?  
A. No, I did not.
- Q. Did you ever see Ptl. Maddaloni on May 18 kiss this lady?  
A. No, I did not.
- Q. Did you see this young lady at any time in Ptl. Maddaloni's automobile?  
A. No, I did not.
- Q. Did you at any time observe Ptl. Maddaloni in his automobile?  
A. Just open the car door and close it again.
- Q. Do you think it's possible, Captain Nelson, that in the period of 45 minutes a man can become ill and have an upset stomach?  
A. I said before anything is possible, Mr. Maul.
- Q. I have no further questions of Captain Nelson.

MR. MAUL TO PATROLMAN MADDALONI

- Q. Ptl. Maddaloni, on May 18, 1972, did you have a conversation at approximately 7:15 with an unidentified female at Flatbush Avenue during the performance on your duties?  
A. Yes, I did.
- Q. What in your own words was the extent of that conversation?  
A. The female came up to me. She said she had missed the train and she was going to Ronkonkoma and she wanted to know when the next train was.
- Q. Had you ever seen this female prior to this?  
A. Never.

## WARD EXHIBIT D

TRIAL OF: S. MADDALONI, LONG ISLAND RAIL ROAD PATROLMAN

JUNE 7, 1972

- Q. At approximately five minutes later Captain Nelson and Sgt. Matthaai came over to you and the unidentified female, is that correct?
- A. No, it's not.
- Q. Would you tell us then what happened?
- A. Captain Nelson walked in the back door. I observed him approximately 30 seconds later. Sgt. Matthaai walked in. I walked away from the female. Approximately 30 seconds after that I saluted Sgt. Matthaai and handed him my memo book to sign. They did not come up to me, I went up to them.
- Q. At any time was Captain Nelson and Sgt. Matthaai and yourself engaged in conversation with this unidentified female together?
- A. No.
- Q. Did you observe Captain Nelson and or Sgt. Matthaai either together or individually have conversation with this unidentified female?
- A. When I came back downstairs from typing a report in the Police Room I observed Captain Nelson walk over to the female who was now sitting on the bench. He talked to her for a period of approximately 60 seconds.
- Q. On May 18, at what time did you go to meal?
- A. 7:30PM.
- Q. Did you subsequent to 7:35PM, did you have any conversation with this unidentified female?
- A. When I came off meal I went over to the dorr by the entrance to the parking lot, talked to the female, asked her what time her train was and if she was going to take it and she said yes, it was 8:31 and I said okay, I'll see you later. I went outside into my car. I fixed the inside door panel of the left panel of my car. It had four loose screws. I walked back in the Station, said good-bye to the female and went upstairs to have my meal.
- Q. What did you have to eat, Ptl. Maddaloni?
- A. I had a bologna hero with mayonaise on it.
- Q. Approximately what time did you have that sandwich?
- A. Approximately 8:00.
- Q. What did you have to drink with that sandwich?
- A. I had two containers of coke that I purchased from the hot dog stand.
- Q. After you ate, what happened then?
- A. Approximately 8:15PM I got sick to my stomach and went into the mens room on the upper level and vomited. Approximately 8:25 I called Lt. Hendry and told him I had an upset stomach and I would not be able to complete the tour. Approximately 8:45 I called my wife by the time I had changed back into civilian clothes and advised her that I was sick and I was on my way home. On the way home I got sick to my stomach on the Long Island Expressway.



## WARD EXHIBIT D

TRIAL OF: S. MADDALONI, LONG ISLAND RAIL ROAD PATROLMAN

JUNE 7, 1972

- Q. And you stopped your vehicle?  
A. I stopped my vehicle and began vomiting.
- Q. How many miles from Flatbush Avenue Station do you live to your home?  
A. At least 60 miles.
- Q. On that evening was the traffic heavy?  
A. Moderate to heavy to the best of my knowledge.
- Q. Normally how long would it take you approximately to go home?  
A. An hour and 15 minutes.
- Q. When you arrived home what did you do, then?  
A. When I arrived home I had conversation with my wife. I then picked up the phone and called Lt. Egan who was then the Desk Officer for the midnight tour. I had advised him that I had gotten sick on the way home. I had just arrived home at 1:23AM. Due to the location of where I had gotten sick I was not able to call the railroad to let them know where I was. I am home now and I will be able to be reached from this minute on and I will call back when I am able to return to work and I advised him that I had gotten sick on the way.
- Q. Did you call the desk, Lt. Egan, at that time due to the fact that your wife advised you that the railroad had called?  
A. No. I called simply to comply with the Manual of Procedures.
- Q. Did your wife advise you that Sgt. Matthaei did call?  
A. After I had conversation with Lt. Egan.
- Q. Did you drive this young lady home?  
A. No, I did not.
- Q. To your knowledge, did this young lady take the 8:30 or 8:31 train?  
A. I have no knowledge of where she went. When I came back down after being sick she was nowhere in the station that I could see.
- Q. Did Ptl. Seiferheld have knowledge of your illness?  
A. Yes, He did. As soon as I called Lt. Hendry when I talked to him, I advised Ptl. Seiferheld that I was sick and was going home.

CAPTAIN SLATTERY

Ptl. Seiferheld didn't have knowledge of your illness, yet. All he had knowledge of is the fact that you stated it to him. Whether you were actually sick he did not know. He is not a doctor. He cannot tell.

MR. MAUL TO PATROLMAN MADDALONI

- Q. Did you make any claim what so ever for sick leave compensation from the railroad?  
A. No.

## WARD EXHIBIT D

TRIAL OF: S. MADDALONI, LONG ISLAND RAIL ROAD PATROLMAN

JUNE 7, 1972

CAPTAIN SLATTERY TO PATROLMAN MADDALONI

- Q. What are the requirements to make a claim for sick leave compensation?  
A. To the best of my knowledge you have to be off sick for seven days before you can comply.
- Q. In affect you couldn't make a claim.  
A. Within that particular time, no. I had no intentions of it.

MR. MAUL

I have no further questions of Ptl. Maddaloni, but I do have a summation.

In conclusion in defense of Ptl. Maddaloni, from the testimony of Sgt. Matthaef, and Captain Nelson, and Ptl. Maddaloni, there is not one instrumental fact which justifies in fact that Ptl. Maddaloni violated any provisions of the Rules and Procedures of the Long Island Railroad Police Department, to it, paragraph 27.C, chapter 2, page 11, nor did he violate agreement rule AR-7, in any way what so ever regarding sick leave compensation. We ask in conclusion that the adjudicating officer find Ptl. Maddaloni not guilty to all charges.

CAPTAIN SLATTERY TO PATROLMAN MADDALONI

- Q. Have you been allowed to answer all questions in your own words and manner?  
A. Yes.

This trial is terminated.

MY SIGNATURE AT THE CONCLUSION OF THIS TRANSCRIPT INDICATES THAT IT IS A TRUE AND ACCURATE ACCOUNT OF MY TRIAL.

---

PATROLMAN MADDALONI

---

DATE



## WARD EXHIBIT E

October 26, 1972

Mr. M. Greene, President  
International Brotherhood of Teamsters  
62-17 Northern Boulevard  
Woodside, New York 11377

Dear Mr. Greene:

During our joint conference held on September 26, 1972, your appeal on behalf of Patrolman S. D. Maddaloni was heard and discussed. Decision was held in abeyance, however, in order to afford my representatives additional time in which to review Mr. Maddaloni's entire file which, as you know, is quite extensive and also because the nature of the discipline assessed, i.e. dismissal, represents the ultimate discipline and should not be lightly passed upon.

Because of various urgent matters, of which you are well aware, we have been unable to complete our review until today. We hope you can understand and forgive our unavoidable delay in this instance.

With respect to Patrolman Maddaloni's dismissal, we find that the nature of the charges, together with his previous poor discipline record involving a multitude of infractions, serious and otherwise, are sufficient grounds for upholding the decision of his commanding officer and we will, therefore, order that the dismissal become effective Tuesday, October 31, 1972.

We regret that we find it necessary to uphold the dismissal of any employee but when the evidence of the employee's incorrigibility is so overwhelmingly evident, we have no alternative.

Very truly yours,

Walter L. Schlager, Jr.

W. L. Schlager, Jr.  
President

JJW/om

NO. 7

110

WARD EXHIBIT F

50 Gibbs Road, Apt. J5  
Coram, New York  
November 8, 1972

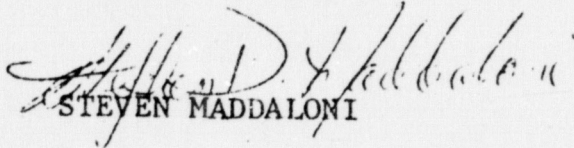
Honorable Walter L. Schlager, Jr., President  
Long Island Railroad  
Jamaica Station  
Jamaica, New York

Re: Disciplinary Action

Dear Mr. Schlager:

This is to advise you that pursuant to paragraph 44.1,  
I hereby request the appointment of a neutral person to decide  
the basis of the charges against me as stated in your  
communication to Mr. Greene.

Very truly yours,

  
STEVEN MADDALONI

RECEIVED  
NOV 10 1972  
8



WARD EXHIBIT G  
AGREEMENT

BETWEEN

THE LONG ISLAND RAIL ROAD COMPANY

AND

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 808

\* \* \* \* \*

For the purpose of establishing a Special Board of Adjustment, under Section 3, Second, of the Railway Labor Act, as amended by Public Law 89-456,

IT IS AGREED:

1. There shall be established a Special Board of Adjustment which shall be known as the Long Island Rail Road Company, Public Law Board No. \_\_\_\_\_, hereinafter referred to as the "Board."
2. The Board shall have jurisdiction only over the claim listed in appendix "A". No other claim or grievance shall be submitted to the Board except by mutual consent of the parties to this agreement.
3. The Board shall consist of three members to wit:
  - (a) The "Carrier Member," appointed by the Carrier, shall be Mr. J. J. Ward, Manager-Labor Relations.
  - (b) The "Employee Member," appointed by the Organization, shall be Mr. M. Greene, President.
  - (c) The Chairman and Neutral Member, appointed by the National Mediation Board, shall be H. Morton Rosen.

In the event of a permanent or temporary vacancy on the Board, with respect to either party member or the Neutral Member, the vacancy shall be filled in the same manner as the original selection.

4. The compensation and expenses of the Carrier Member shall be borne by the Carrier. The compensation and expenses of the Employee Member shall be borne by the Organization. The compensation and expenses of the Neutral Member shall be fixed and paid by the National Mediation Board. All other expenses shall be borne equally by the Carrier and the Organization.

5. The Board shall meet at a place and time mutually acceptable to the Board Members and shall continue to meet at mutually convenient times and places until all matters submitted to the Board are disposed of.

6. The Board shall hold hearings on the claim (or grievances) submitted to it. At such hearing, the parties may be heard in person, by counsel or by other authorized representative as they may elect. The parties may present, either orally or in writing, statements of fact, supporting evidence and data and arguments as to their position with regard to the case being considered by the Board. The Board shall have authority

## WARD EXHIBIT G

request the production of additional evidence from either party.

7. The Board shall make findings of fact and render an award in the case submitted to it, except if the case is mutually withdrawn by the Board. Such findings and award shall be in writing and copies shall be furnished to the respective parties. The award shall be final and binding on both parties to the dispute, as provided by Public Law 8636, and if in favor of the petitioner, shall direct the Carrier to comply herewith on or before the day named.

Each member of the Board shall have one vote and any two members of the Board shall be competent to render an award and to make any decision, which the Board is empowered to make by statute or this agreement, to carry out the functions of the Board. In case a dispute arises involving an interpretation of the award while the Board is in existence or upon appeal, the Board, upon request of either party, shall interpret the award in light of the dispute.

8. The Board hereby established shall continue in existence until it has disposed of the claim (or grievance) submitted to it under this agreement, after which it will cease to exist, except for interpretation of its award as provided herein.

Signed at Jamaica, New York this 23rd day of January 1973

For the Organization:

For the Carrier:

W. L. Greene  
President, Local 808

W. L. Schlager, Jr.  
President



## WARD EXHIBIT G

Appendix "A."

Discipline Case of Patrolman Steven Maddaloni dismissed on the charge of:

"Violations of the Long Island Railroad Police Department Manual of Procedure on May 18, 1972 page 11, paragraph 27.0 and page AR-7, paragraph 32.3."

## WARD EXHIBIT H

KREMER, FINE &amp; KILGANNON • 20 WEST PARK AVE. • LONG BEACH, NEW YORK 11561 • 516-431.0500

ARTHUR J. KREMER  
DAVID M. FINE  
FRANK X. KILGANNONHEMPSTEAD, NEW YORK OFFICE:  
154 HENRY STREET, HEMPSTEAD, NEW YORK 11550  
516-485-4555HOWARD I. DUBOW  
ROBERT FEINGOLDLYNN J. ELLINS, COUNSEL  
KALMAN V. GALLOP

January 26, 1973

Hon. Walter L. Schlager, Jr., President  
Long Island Railroad  
Jamaica Station  
Jamaica, New YorkRe: Steven Maddaloni  
50 Gibbs Road, Apt. J5  
Coram, New York

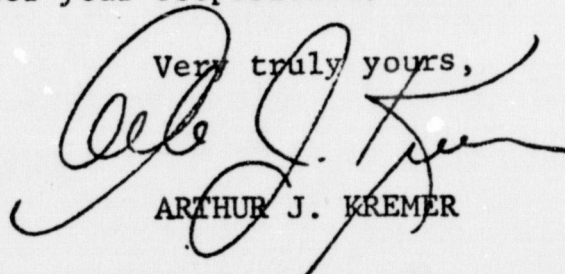
Dear Mr. Schlager:

The above-named individual was a member of the Long Island Railroad Police prior to his dismissal in late October, 1972. Early in November, he wrote to you requesting that pursuant to paragraph 44.1 of the Rules and Regulations that a neutral person be appointed to decide the basis of the charges against him.

I realize that the recent Long Island Railroad strike has prevented your office from moving in connection with this matter, but would most appreciate if you would arrange to hold a hearing and so designate a neutral person at the earliest possible date.

Thank you in advance for your cooperation.

Very truly yours,

  
ARTHUR J. KREMER

AJK/blf



## WARD EXHIBIT I

February 7, 1973

Mr. Arthur J. Kremer  
Kremer, Fine & Kilgannon  
20 West Park Avenue  
Long Beach, New York 11561

Dear Mr. Kremer:

This acknowledges receipt of your letter of January 26, 1973, in connection with the request made by former Long Island Rail Road Patrolman Steven Maddaloni that a "neutral person be appointed to decide the basis of charges made against him" pursuant to Paragraph 44.1 of the Rules and Regulations.

Paragraph 44.1 of the Manual of Procedure is designed specifically to adjudicate disputes arising under the "Union Shop Agreement" and is not applicable in the context cited by Mr. Maddaloni.

Notwithstanding, however, this is to advise you that the International Brotherhood of Teamsters, Local 808, and the Long Island Rail Road Company have entered into an agreement to establish a Special Board of Adjustment, as provided by Public Law 89-456 to adjudicate the dispute. The National Mediation Board has approved the agreement, and the Board is now in the process of beginning its adjudicatory functions. Thus, the remedy sought by Mr. Maddaloni has been obtained.

Mr. Maddaloni should be instructed to contact his union representative for further details.

Very truly yours,

Walter L. Schlager, Jr.

W. L. Schlager, Jr.  
President

*HNC*  
HNC/pa

cc: M. Greene, President  
International Brotherhood of Teamsters

## WARD EXHIBIT J

PUBLIC LAW BOARD NO. 1087

ARBITRATION BETWEEN	*	IN THE
INTERNATIONAL BROTHERHOOD	*	
OF TEAMSTERS LOCAL 808	*	MATTER OF
	*	
Vs.	*	PATROLMAN STEVEN MADDALONI
THE LONG ISLAND	*	
RAIL ROAD COMPANY	*	AWARD NO. 1

\*\*\*\*\*

Arbitration was held this *21st* day of *May*, 1973, in New York City between the International Brotherhood of Teamsters Local 808 hereinafter called the "Union" and The Long Island Rail Road Company hereinafter called the "Company" in the matter of Patrolman Steven Maddaloni hereinafter called the "Grievant".

At the hearing Patrolman Steven Maddaloni failed to appear and consequently no testimony was taken from the grievant. The case was submitted on the testimony taken at the previous trial of this matter along with written briefs and oral arguments.

THE ISSUE

Whether or not the disciplinary action taken against Patrolman Maddaloni, that is discharge, was for just and valid cause and was proper under the circumstances.

THE FACTS

On May 18, 1972, Patrolman Maddaloni was working the four to twelve shift at the Flatbush Avenue Station in Brooklyn, New York. Two superior officers of the company arrived at the location about 7:15 P.M. they being Sgt. Nathan Matthaef and Capt. George Nelson, and observed Patrolman Maddaloni talking with a young woman for approximately 5 minutes in the Station. Sgt. Matthaef at that time then told Patrolman Maddaloni to prepare a report on an incident which had happened prior to and which was unrelated to this occurrence.



## WARD EXHIBIT J

While Patrolman Maddaloni was away preparing the report the young woman approached Sgt. Matthaesi and told him that she had missed her train and that "Steve" was going to take her home. Subsequently, Patrolman Maddaloni returned and at that time was informed by Sgt. Matthaesi not to engage in any unnecessary conversation with anyone other than in the line of duty. After being so instructed Patrolman Maddaloni then called off for his meal period at approximately 7:30 P.M. After so doing he was then observed by Capt. Nelson and Sgt. Matthaesi talking for approximately 15 minutes to the young lady in the parking lot adjacent to the Station.

Subsequently at about 8:25 P.M. Patrolman Maddaloni called and marked off duty alleging that he was ill. A verification call was made to his home at 11:25 P.M. and the caller was told that Patrolman Maddaloni had not returned home as of that time. Patrolman Maddaloni arrived home at about 1:23 A.M. and immediately called the duty officer informing him of his arrival home.

As a result of Patrolman Maddaloni being absent from his duty due to the alleged sickness another officer had to be relieved from his normal duty post to complete Maddaloni's tour at the Flatbush Avenue Station.

Subsequently Maddaloni was charged with violation of the Long Island Rail Road Police Manual Procedures Page 11, Paragraph 27.0 and Page A-7, Paragraph 32.3.

Paragraph 27.0 of the Manual reads: Failure to comply with the Manual of Procedures or with lawful orders of a superior, neglect of duty or interference with others in the performance of their duties, or any other act or omission prejudicial to efficiency or discipline, shall constitute misconduct.

## WARD EXHIBIT J

Paragraph 32.3 reads: Carrier reserves the right to investigate any or all employees calling off on account of sickness by telephone or other means available to Carrier. If a representative of the Carrier calls by telephone, or in person, at the place where the absent employee advised, under 32.2 hereof, that he could be found and cannot contact him, the absent employee will be subsequently advised by certified mail of Carrier's inability to contact him and he will be deemed to be absent without leave unless he can, within seven (7) calendar days from the date of the letter's certification, prove to Carrier's satisfaction that he was unable to respond to such inquiry. Unless such employee complies with these provisions he will not be granted sick leave and will be subject to appropriate disciplinary action in accordance with the provisions of the existing agreement.

Trial on these charges was held on June 7, 1972 after which Maddaloni was notified that he was disciplined by discharge from the Carrier's service. This discharge was appealed and became the subject of this arbitration.

At the trial Patrolman Maddaloni testified that he was unable to arrive home sooner because of the distance he had to travel and the density of the traffic and also he became extremely ill and was forced to pull the car off the road and rest. Normal time for the trip to Maddaloni's home to the Flatbush Station is approximately one to one and a quarter hour. Patrolman Maddaloni at no time sought or received medical treatment and no evidence of such treatment was submitted at the trial.



## WARD EXHIBIT J

ARGUMENT

The position of the union in this matter is that the company did not produce any substantial evidence that Patrolman Maddaloni committed any wrong; at most he spoke to the young woman in question possibly against the orders of Sgt. Mattiacei while he was engaged on his meal period. The union alleges that the company produced no evidence that would amount to a misconduct violation of Article 27 and further that since no claim for sick leave was made there could be no violation of the provision of the sick leave section of the Manual.

The company's position is that there was sufficient misconduct in that Maddaloni disobeyed an officer's order in speaking to the young woman and in that the sickness was feigned and as such he was neglectful of his duties and interfered with others in the performance of their duties since it was necessary for another patrolman to be relieved from his duty post to complete Maddaloni's tour. The company has taken the position that the grievant feigned sickness for the sole purpose of taking the young woman home and as such violated Article 27 and also Section 32.3. Further the company feels that in view of the past record of Patrolman Maddaloni and the seriousness of the offense that the disciplinary action of discharge in this matter was justified.

The salient facts in this case boil down to the question of whether or not Maddaloni was truly ill or whether he was feigning sickness in order to be with the lady in question. If he was not truly ill then certainly he was wrong in calling in and so stating and certainly should be subject to the most severe disciplinary action possible. However, if he were truly ill then of course he has committed no wrong.

## WARD EXHIBIT J

It is your arbitrator's opinion considering all the evidence produced by the employer and considering the lack of certain evidence that Patrolman Maddaloni was not actually sick as he stated and alleged and in effect by falsely reporting same was in violation of Article 27.

Most significant to your arbitrator was the lack of any medical evidence produced in connection with Maddaloni's illness. It seems inconceivable that someone who is forced to rest along side a road for several hours too ill to seek aid, assistance, or a phone, would not go to a doctor or a hospital and seek medical care and attention. Maddaloni on the morning in question never received or sought medical care or treatment. Had he done so and had said treatment verified his illness, the situation would of course be entirely different. This lack of medical evidence is most significant and buttresses and supports the other evidence produced by the company.

Other salient points which should be noted are that the unknown female referred to Patrolman Maddaloni as "Steve" when she spoke to Sgt. Matthaesi and stated that Steve is going to take me home. This certainly indicates more than a cursory acquaintance between Maddaloni and the unknown female but indicates a much closer relationship than that admitted by Maddaloni.

Additionally, despite the warning of Sgt. Matthaesi telling Maddaloni not to speak to anyone unless necessary, the grievant spoke to the lady in question on the parking lot for approximately 15 minutes although admittedly it was on his lunch hour and technically he was not strictly on duty. However, while this in itself may not be enough to warrant disciplinary action Maddaloni's actions in conversing with the female certainly lends



## WARD EXHIBIT J

credence to the supposition and belief that he was not ill as claimed but did actually as the company alleges plan to and subsequently take the young lady home. It should be noted that immediately after this conversation Maddaloni called the duty officer and reported himself ill. Upon leaving the Flatbush Station no one heard from Patrolman Maddaloni again until approximately 5 hours later when he returned home. It seems odd indeed that on a busy well traveled highway when one is forced to the side of the road to rest for 4 or 5 hours that no one stopped to offer assistance or aid to Officer Maddaloni.

In summary your arbitrator cannot believe that Maddaloni was actually ill. From the entire evidence produced by the company namely the statement of the girl that Maddaloni was to take her home, his conversation with her in direct opposition to an order from his superior, his calling in ill several minutes after this conversation, his unavailability for approximately 5 hours while allegedly off the road on a busy well traveled highway and significantly the lack of any medical evidence attesting to his illness; the only conclusion your arbitrator can arrive at is that Maddaloni was not ill as alleged but in fact took the young lady to her home as she stated he would.

As such, Maddaloni was certainly in violation of Article 27 of the Manual and most certainly was subject to disciplinary action for his acts under these circumstances.

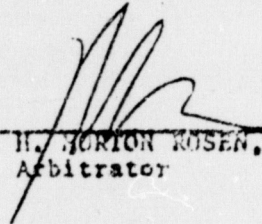
As to the severity of the disciplinary action, namely, discharge, in view of the poor record of Maddaloni which includes both major and minor infractions and which includes two prior suspensions within a period of approximately two years and

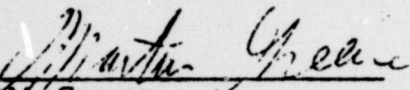
WARD EXHIBIT J

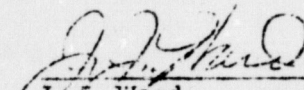
considering the gravity of the offense committed by Patrolman Maddaloni, your arbitrator certainly has no quarrel with the decision of the company to discharge Patrolman Maddaloni from their service.

DECISION

The discharge of Patrolman Maddaloni be upheld.

  
H. HORTON ROSEN,  
Arbitrator

  
M. Greene  
Employee Member

  
J. S. Ward  
Carrier Member



AFFIDAVIT OF COOK IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

STEPHEN D. MADDALONI,

Plaintiff,

Civil Action  
No. 74 C 81

- against -

AFFIDAVIT

LONG ISLAND RAILROAD, W.L. SCHLAGER, JR.,  
LOCAL 808 INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFERS, WAREHOUSEMEN and  
HELPERS OF AMERICA, M. GREENE and  
JOHN MAHONEY,

Defendants.

STATE OF NEW YORK)

: ss.:

COUNTY OF QUEENS )

HARRY C. COOK, being duly sworn, says:

I am Captain-In Charge of the Police Department of The Long Island Rail Road Company, one of the above-mentioned defendants, and I make this affidavit in support of the defendants' motion for Summary Judgment in favor of the defendants.

Prior to my being appointed in charge of the Long Island Rail Road Police Department on December 14, 1972, I held the position of commanding officer, patrol division, in which position I had overall responsibility and supervision of the uniformed forces of the LIRR's Police Department and reported directly to the Director of Security who had overall charge of all LIRR police

## AFFIDAVIT OF COOK IN SUPPORT OF MOTION

forces, both uniformed and detective. During all of the times pertinent in the complaint prior to December 14, 1972, I held the position of commanding officer, patrol division and subsequent to December 14, 1972, to date, I have been in charge of all police forces of the LIRR. As commanding officer, patrol division, among my other responsibilities were, upon receiving charges against a particular patrolman by the supervisory officers under my jurisdiction, to assign the matter to a trial officer for the holding of a Company trial and upon the closing of the record of such Company trial, to review the record, evaluate it and make a determination of the guilt or innocence of the accused patrolman and if found guilty, to assess appropriate discipline against the particular member of the Police Department.

In the case of Patrolman Maddaloni, the initial charges against him were preferred by Sergeant Matthaei and Captain Nelson in memorandum on Police Department stationery directed to Mr. L.J. Fox, who was at that time Director of Security. The aforesaid memoranda of Sergeant Matthaei and Captain Nelson dated May 24, 1972, are annexed hereto and made part hereof as Exhibit A. In accordance with the standard procedure of the Police Department of the LIRR, as commanding



## AFFIDAVIT OF COOK IN SUPPORT OF MOTION

officer of the patrol division, I then sent Mr. Maddaloni a notice that a Company trial would be held in regard to these charges on June 7, 1972. At the same time, I assigned one of the LIRR's police captains, Captain J.M. Slattery, to act as trial officer and preside over receiving of evidence at such Company trial. As shown by Exhibit D to the affidavit of John J. Ward, submitted simultaneously herewith, the Company trial of Mr. Maddaloni was held on June 7, 1972, with Captain Slattery presiding as the trial officer. Upon the completion of the Company trial, and the perfection of the trial record, in due and normal course the entire record was forwarded to me by Captain Slattery without any comment or recommendations. Upon receipt of said trial record, I reviewed it and the evidence contained therein and as part of my duties as commanding officer, patrol division, found that in my judgment Mr. Maddaloni had committed the acts of which he was accused and that such acts were in violation of the LIRR Police Department Manual of Procedure, as was charged. Thereupon and upon reviewing the nature of Mr. Maddaloni's offense and his entire record as an employee of the LIRR and as his commanding officer, I determined that the appropriate discipline in this instance was dismissal

## AFFIDAVIT OF COOK IN SUPPORT OF MOTION

and accordingly, I so found and by letter dated July 13, 1972, so notified Mr. Maddaloni and his Union. A copy of the letter of notification is annexed as Exhibit A to the affidavit of Martin S. Greene, submitted simultaneously herewith.

Following the notification of the result of the trial and the discipline assessed, the matter was appealed by Mr. Maddaloni's representatives to higher authorities within the Company in accordance with standard procedure in such disciplinary matters, and I had no further direct function or contact with this proceeding or matter thereafter. The Company trial held in regard to Mr. Maddaloni's violations of the Police Department Manual of Procedure was in strict accordance with the normal and regular procedure utilized in all disciplinary matters of the Police Department which are of sufficient gravity to warrant formal charges and a Company trial.

---

HARRY C. COOK

Sworn to before me this  
13th day of March, 1974.

---

MARY K. BRUSH

SEAL



## COOK EXHIBIT A

**The Long Island Rail Road**  
**POLICE DEPARTMENT**

TO: L.J. Fox, Director Security  
From: M. Matthaei, Sergeant #204  
Subject: VIOLATION OF THE MANUAL OF PROCEDURE

Date: 5/24/72

On Thursday, May 18, 1972, the undersigned, in company of Captain G. Nelson responded to Flatbush Ave. Terminal on a routine inspection of the post. At approximately 7:15 PM, this date, Ptl. Maddaloni was observed to be in conversation with an unknown female, approximately 21 years old, in the main waiting room area for a period of about 5 minutes.

When Ptl. Maddaloni had finished his conversation, he was directed to the police room to prepare a report. While Ptl. Maddaloni was on the upper floor, the unknown female struck-up a conversation during which she stated "I missed my train to Ronkonkoma and "Steve" is going to take me home."

At approximately 7:26PM Ptl. Maddaloni returned to the main floor and was advised by this officer that he was not to engage in conversation with anyone unnecessarily, while on duty. Ptl. Maddaloni then stated that he was going on meal at 7:30 and he could do as he pleased. At 7:30PM Ptl. Maddaloni called off for meal and was observed to accompany the above mentioned female to the parking lot where they engaged in conversation for a period of about 15 minutes.

Captain Nelson and the undersigned then left the F.B.A. station enroute to Jamaica, and upon arrival there, was informed by Desk Lt. Hendry that Ptl. Maddaloni had called off D/S with a stomach upset, at 8:25PM.

At 11:55 PM a verification call was made to Ptl. Maddaloni's home. A female, identified as Mrs. Maddaloni, stated that Ptl. Maddaloni had not returned home, as of that time.

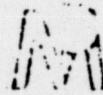
In view of the foregoing, it appears that Ptl. Maddaloni is in violation of the LIRR Manual of Procedure, Chapter 2, page 12, paragraph 35.0 and AR 7, paragraph 32.3.

The above forwarded for your information and necessary handling.

M. Matthaei  
Sergeant #204

*Sgt M. Matthaei*

## COOK EXHIBIT A



The Long Island Rail Road  
POLICE DEPARTMENT

TO: L.J. Fox, Director of Security

Date: 5/24/72

From: Captain OH Nelson

Subject: Report of Sgt Int'lendi Involving Ptl. Kaddaloni on 5/10/72, concerning conducting

As the officer was present at Flatbush Avenue on subject date, when he was called to the scene, he was taken into custody by our patrolmen on duty, I will submit my report on this matter.

On 5/10/72, the charge most serious is contained in chapter 21, constituting the conduct of a person in a motor vehicle to cover his vacancy, and he left his position of duty as a patrolman at Flatbush Ave Station. Chapter 22, Page 211, paragraph 27 in effect in regard to this misconduct.

Captain OH Nelson



AFFIDAVIT OF GREENE IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

STEPHEN D. MADDALONI,

Plaintiff,

-against-

Civil Action  
No. 74 C 81

AFFIDAVIT

LONG ISLAND RAILROAD, W.L. SCHLAGER, JR.,  
LOCAL 808 INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFERS, WAREHOUSEMEN and  
HELPERS OF AMERICA, M. GREENE and JOHN  
MAHONEY,

Defendants.

STATE OF NEW YORK)

: ss.:

COUNTY OF QUEENS )

MARTIN S. GREENE, being duly sworn, says:

I am the President of Local Union 808 of the  
International Brotherhood of Teamsters, Chauffers, Ware-  
housemen and Helpers of America (hereinafter Local 808),  
with offices at 62-17 Northern Boulevard, Woodside, New  
York and I make this affidavit in support of the Motion  
of the defendants herein for Summary Judgment.

Local 808, during the period covered by the  
complaint herein, was the duly authorized and certified  
collective bargaining agent and representative, pursuant  
to the Railway Labor Act, of the uniform members of the

## AFFIDAVIT OF GREENE IN SUPPORT OF MOTION

LIRR Police Department below the rank of Captain, and as President of such Local 808, I was the duly authorized and designated representative of such members of the LIRR Police Department.

A copy of the letter of May 25, 1972, annexed as Exhibit B to the affidavit of John J. Ward, being submitted simultaneously herewith, was sent to me as President of Local 808 which, in accordance with the collectively bargained agreement, served notice upon my Union that one of the members thereof was being charged with violations of the Company rules. Accordingly, I made arrangements that one of the officers of the Union, Eugene Maul, who was also at that time a Sergeant in the LIRR Police Department, be present at the scheduled trial to represent and assist Mr. Maddaloni in defending himself against the charges. Such representation and assistance is in accord with the provisions of the collectively bargained agreement and is normal procedure in the Company trial procedures. As shown by the transcript of the said Company trial of Mr. Maddaloni (annexed as Exhibit D to the aforesaid affidavit of John J. Ward) at the very outset the presiding trial officer advised Mr. Maddaloni of his right to be represented by a duly



## AFFIDAVIT OF GREENE IN SUPPORT OF MOTION

authorized representative of Local 808, which representation Mr. Maddaloni thereupon, on the record, acquiesced in.

Following the Company trial on June 7, 1972, Mr. Maddaloni and Local 808 were advised by Captain Cook, commanding officer of the patrol division of the LIRR Police Department, that Mr. Maddaloni had been found guilty of the charges and as discipline was being dismissed from the service. (a copy of the letter of July 13, 1972, from Captain Cook is annexed hereto and made a part hereof as Exhibit A). As the President of Local 808 and the appropriate authorized representative of Patrolman Maddaloni, I promptly filed a notice of appeal from the discipline assessed, and a copy of such notice of appeal is annexed hereto and made a part hereof as Exhibit B. In addition, because not only Local 808, but a substantial number of the non-operating unions on the property of the LIRR, were engaged in extensive contract negotiations, it was impossible for either Local 808 or the carrier to promptly progress the appeal and, accordingly, on behalf of Mr. Maddaloni, I requested in writing a waiver of the time limits in regard to progressing the appeal (a copy of which is

## AFFIDAVIT OF GREENE IN SUPPORT OF MOTION

annexed hereto and made a part hereof as Exhibit C) and orally requested that the discipline be held in abeyance pending the completion of the appeal. The carrier agreed to waive the time limits on the appeal and similarly, held the discipline in abeyance. On September 26, 1972, a conference was held with the duly designated officers of the carrier to hear the appeal, and under date of October 26, 1972, I was advised by letter from Mr. Schlager that the appeal was denied and the discipline of dismissal would be carried out. Accordingly therewith, Mr. Maddaloni was dismissed from service effective October 31, 1972.

Following the request of Mr. Maddaloni for an appeal to a neutral arbitrator (see Exhibit F to the aforementioned affidavit of John J. Ward), I undertook, as is normal and proper and in accordance with the applicable collectively bargained agreement, to enter into an agreement with the carrier creating Public Law Board No. 1087 to progress and handle the appeal to a neutral arbitrator as provided for in Section 3 of the Railway Labor Act. A copy of said agreement creating Public Law Board No. 1087 is annexed the the aforementioned affidavit of John J. Ward, as Exhibit G. I subsequently notified Mr.



## AFFIDAVIT OF GREENE IN SUPPORT OF MOTION

Maddaloni that we had arranged for his appeal to be heard by an arbitrator and under date of April 17, 1973, a letter addressed to Mr. John Mahoney, Business Manager, Local 808, Mr. Maddaloni acknowledged, without objection, the fact that I was handling this matter on his behalf and requested advice as to its progress. A copy of said letter of April 17, 1973, is annexed hereto as Exhibit D. Shortly thereafter, when I was advised that the date for the hearing on the arbitration had been set for May 24, 1973, I promptly wrote Mr. Maddaloni advising him of the same and requested him to contact me if he had any questions. A copy of my letter of May 17 giving him this notice is annexed hereto and made a part hereof as Exhibit E. Because of a last-minute conflict in the schedule of the arbitrator, he had to postpone the arbitration and reschedule it for Thursday, May 31, 1973, which fact I promptly communicated to Mr. Maddaloni as shown in my letter dated May 24, 1973, annexed hereto and made a part hereof as Exhibit F. Previous to this, at Mr. Maddaloni's request, I had forwarded to him a copy of the submission which I had made on his behalf to the arbitrator. A copy of said submission is annexed hereto and made a part hereof as Exhibit G.

## AFFIDAVIT OF GREENE IN SUPPORT OF MOTION

Since all of the foregoing had been properly mailed by First Class United States Mail to Mr. Maddaloni's last given address, 5 Juniper Court, Coram, New York, I was a little puzzled by a letter dated September 13, 1973, addressed to John Mahoney of Local 808, wherein Mr. Maddaloni said he had no prior knowledge that an appeal would be made or was held although he was glad to see that Mr. Maddaloni, in his letter, appreciated the efforts that I and the other members of the Union had asserted on his behalf in this matter. A copy of Mr. Maddaloni's letter of September 13, 1973, is annexed hereto and made a part hereof as Exhibit H. At approximately the same time, the decision of the arbitrator H. Morton Rosen affirming the discipline assessed against Mr. Maddaloni, was received and thereafter a copy was mailed to Mr. Maddaloni. A copy of the arbitration decision is annexed to the aforementioned affidavit of John J. Ward as Exhibit J.

At no time during the handling of Mr. Maddaloni's Company trial on the property of the carrier nor during the appeal to the neutral arbitrator had Mr. Maddaloni objected to the representation provided him by his duly authorized



## AFFIDAVIT OF GREENE IN SUPPORT OF MOTION

representative from Local 808, nor had he ever at any time expressed any dissatisfaction with the representation. During this entire period from June 1972 through July 1973, Mr. Maddaloni would, from time to time, either telephone the offices of Local 808 or drop in personally to find out how the matter was being progressed and as indicated before, during these occasions, never expressed any objection or dissatisfaction with our handling of this matter.

During this entire period, as previously indicated, the representation afforded Mr. Maddaloni by Local 808 and the handling of this matter through arbitration, as provided by Section 3 of the Railway Labor Act, was in full accord with normal procedure in all matters of this type between the carrier and the Union.

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MARTIN S. GREENE

Sworn to before me this  
13th day of March, 1974.

---

MARY K. BRUSH

SEAL

## GREENE EXHIBIT A

**The Long Island  
Rail Road**

Jamaica Station

Jamaica, New York 11435

Phone 212 JAmAica 6 0800

Chairmen: William J. Hogan  
Lawrence R. Bailey  
Leonard Braun  
William L. Butcher  
Donald H. Elliott  
Justin N. Feldman  
Harold L. Fisher  
Mortimer J. Gleason  
Frederic R. Pozner  
Ellen W. Pyne  
William A. Shea

July 13, 1972

Ref. No. D22/3

Cert. Mail-704672

Mr. S.D. Maddaloni  
248 Lincoln Avenue  
St. James, New York

Dear Sir,

On June 3, 1972 you were accorded a Departmental Trial for violations of the Long Island Railroad Police Department Manual of Procedure on May 18, 1972, as indicated:

Item # 1 Page 11, paragraph 27.0

Item # 2 Page AR-7, paragraph 32.3

The evidence adduced at the trial clearly establishes your guilt of the charges. Upon reviewing your past record since you entered service with this Department in 1970, it is my decision that you be disciplined by dismissal from the service of the Long Island Railroad Police Department.

You will be given written notification of the date on which this discipline will become effective.

Very truly yours,

*HCC*

H.C. Cook  
Commanding Officer  
Patrol Division

cc: R.E.P.

L.J.F.

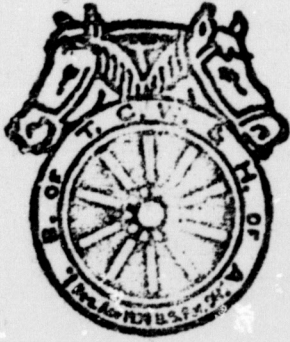
Teamsters Union-808 - 704672

-File.

CARRIERS EXHIBIT NO. 2



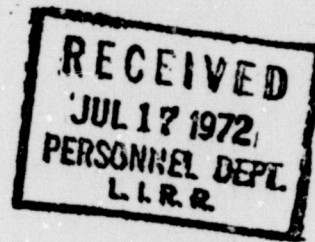
GREENE EXHIBIT B



**LOCAL UNION 808**  
**INTERNATIONAL BROTHERHOOD**  
**OF**  
**TEAMSTERS • CHAUFFEURS • WAREHOUSEMEN & HELPERS**  
**OF AMERICA**

62-17 NORTHERN BOULEVARD, WOODSIDE, N. Y. 11377 - Phone 274-5400

JOHN MAHONEY, Business Manager



Long Island Railroad  
Jamaica Station  
Jamaica New York N.Y.

Re: Patrolman Maddaloni

Attn: Mr. Jack Ward

Dear Sir:

We wish to appeal the discharge of Patrolman Maddaloni.

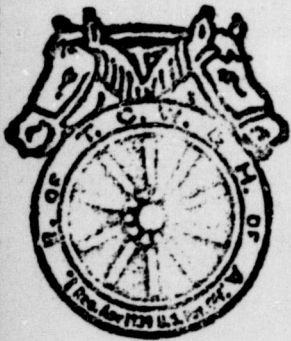
As we feel it is unusually harsh discipline for the offenses he was found guilty of.

Very truly yours,

Martin Greene  
President

EXHIBIT NO. 3  
B

GREENE EXHIBIT C



**LOCAL UNION 808**  
**INTERNATIONAL BROTHERHOOD**  
**CF**  
**TEAMSTERS • CHAUFFEURS • WAREHOUSEMEN & HELPERS**  
**OF AMERICA**

62-17 NORTHERN BOULEVARD, WOODSIDE, N. Y. 11377 - Phone 274-5400

JOHN MAHONEY, Business Manager

July 25, 1972

Mr. Jack Ward  
Manager Labor Relations  
Jamaica Station  
Jamaica, N. Y. 11435

Dear Sir:

We would like to ask for a waiver of time limits  
on the appeal of Patrolman Maddaloni's discharge.

Due to negotiations it makes it impossible to  
meet at this time in the above matter.

Yours truly,

M. Greene  
President

MG:1e

CARRIERS TRUCK NO. 5



GREENE EXHIBIT D

Stephen D. Maddaloni  
5 Juniper Court  
Coram, New York 11727  
April 17, 1973

Mr. John Mahoney  
Business Manager  
Local Union 808, I.B.T.  
62-17 Northern Blvd.  
Woodside, New York 11377

Dear John,

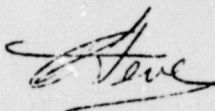
Thank you for your letter of March 21 and the enclosed card.

On the front of the card it states that I must carry a receipt showing that my dues are up to date. If such a receipt is necessary as stated on the card, please send me one immediately.

Also, as I requested in my last letter, please notify me of a date on which I should pay my future dues each month.

Again thanking you for your cooperation, I remain,

Fraternally,



P.S. Please give me a progress report as to how Marty is coming along with the neutral. How does it appear the outcome will be? Approximately how long do you think it will take before we get a decision?

CERTIFIED MAIL

GREENE EXHIBIT E  
-LOCAL UNION 209

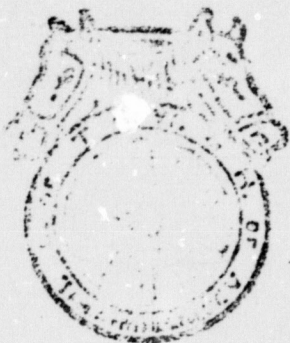
1990-1991

TRANSIT - CHARTERS - WA. JOHNSON & HELPERS  
OF AMERICA

42-17 NORTHERN BOULEVARD, GARDEN CITY, N. Y. 11527 Phone 274-5465

JOHN MAHONEY Business Manager





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GREENE EXHIBIT F

LOCAL UNION 808

INTERNATIONAL BROTHERHOOD

OF

TEAMSTERS • CHAUFFEURS • WAREHOUSEMEN & HELPERS  
OF AMERICA

62-17 NORTHERN BOULEVARD, WOODSIDE, N. Y. 11377 - Phone 274-5400

JOHN MAHONEY, Business Manager

May 24, 1973

Mr. S. D. Maddaloni  
5 Juniper Court  
Coram, New York 11727

Dear Sir:

Your scheduled appeal for today, Thursday the 24th was postponed by the named arbitrator for reasons best known to him.

Your appeal is rescheduled for Thursday, May 31st at 11:00 A.M. at the Holiday Inn of Laguardia.

If you have any questions concerning the above please contact this office.

Yours truly,

*[Signature]*  
M. Greene  
President

MG:le



77c

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GREENE EXHIBIT G

**LOCAL UNION 808**

**INTERNATIONAL BROTHERHOOD**

**OF**

**TEAMSTERS • CHAUFFEURS • WAREHOUSEMEN & HELPERS  
OF AMERICA**

62-17 NORTHERN BOULEVARD, WOODSIDE, N. Y. 11377 - Phone 274-5400

IN MAHONEY, Business Manager

PUBLIC LAW BOARD NO. 1087

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

LOCAL 808

VS

THE LONG ISLAND RAIL ROAD COMPANY

---

EMPLOYEES' SUBMISSION

---

EMPLOYEES STATEMENT OF CLAIM:

Discipline case of Patrolman Steven Maddaloni; reversal of discipline and pay for all time lost.

EMPLOYEES STATEMENT OF FACTS:

Patrolman Maddaloni was notified by certified letter dated May 25, 1972 to be present at a trial to be held on June 7, 1972 in connection with the following charges:

"Violation of the LIRR Police Department Manual of Procedure Paragraph 27.0 (page 11) and Paragraph 32.3 (page AR-7)."





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GREENE EXHIBIT G  
**LOCAL UNION 808**

**INTERNATIONAL BROTHERHOOD  
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**JOHN MAHONEY, Business Manager**

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The trial was held as scheduled. The Carrier determined that he was guilty of the charges and assessed discipline of dismissal as a result thereof.

The record of this dispute reveals that on May 18, 1972 Patrolman Maddaloni was assigned to the 3:59 to 11:59 PM tour at Flatbush Avenue Station in Brooklyn, N.Y. Two Carrier witnesses, Sgt. Matthaei and Capt. Nelson, have alleged that at about 7:15 PM they observed the Patrolman engaged in conversation with an otherwise unidentified young woman. After making this observation for a period of about 5 minutes the two superior officers allege that they approached the Patrolman and directed him to go to the police locker room for the purpose of preparing a written report of an incident not otherwise identified nor pertinent to this incident.

While the Patrolman was thus engaged the Sergeant alleges that the otherwise unidentified young woman told him, in the presence of the Captain, that "Steve" (Maddaloni) was going to take her home to Ronkonkoma because she had missed her train earlier. Carrier's witnesses further allege that when the Patrolman returned from the previously assigned errand they



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**JOHN MAHONEY, Business Manager**

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instructed him not to engage in unnecessary conversations with anyone.

Carrier's witnesses further allege that when told the foregoing the Patrolman stated that he was not going on his meal break at 7:30 PM and could do what he wanted since the Company had no hold on him while he was on meal break. Finally, Carrier's witnesses allege that they observed the Patrolman and the young woman in conversation beside his car in the parking lot for a period of about 15 minutes after 7:30 PM.

The record further reveals that during his lunch period the Patrolman became ill from something he had eaten and, as a result, could not complete his tour of duty. He called the duty officer at 8:25 PM and properly marked off duty for reason of that illness.

Carrier Witness Matthaai further alleges that he called the Patrolman's home at 11:55 PM for verification of illness as provided under the terms of the effective sick leave agreement and was told that he had not yet arrived home but that he had called at or about 9:00 PM to tell his wife that he was on the way home.





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The record reveals that Claimant arrived home at 1;23 AM, May 19th and immediately called the duty officer to answer the verification call.

The Patrolman testified at the trial that he was unable to arrive home sooner because of the long distance he had to drive; the density of traffic; and because he became so ill along the way that he had to pull over and rest until his strength returned.

It is on such flimsy evidence that the Carrier has arrived at a determination that the Patrolman is guilty of violating Paragraph 27.0 (page 11) and Paragraph 32.3 (page AR-7).

POSITION OF THE EMPLOYEES"

It is the position of the Brotherhood that there is absolutely no basis for the charges levelled against the Patrolman and that the Carrier has failed completely to establish evidence of probative value to prove any violation of the cited Manual of Procedure Sections. The cited sections read as follows:



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"27.0 Failure to comply with the Manual of Procedure or with lawful orders of a superior, neglect of duty or interference with others in the performance of their duties, or any other act or omission prejudicial to efficiency or discipline, shall constitute misconduct."

"32.3 Carrier reserves the right to investigate any or all employees calling off account sickness by telephone or other means available to Carrier. If a representative of the Carrier calls by telephone, or in person, at the place where the absent employee advised, under 32.2 hereof, that he could be found and cannot contact him, the absent employee will be subsequently advised by certified mail of Carrier's inability to contact him and he will be deemed to be absent without leave unless he can, within seven (7) calendar days from date of the letter's certification, prove to Carrier's satisfaction that he was unable to respond to such inquiry. Unless such employee complies with these provisions he will not be granted sick leave and will be subject to appropriate



# LOCAL UNION 808

## INTERNATIONAL BROTHERHOOD

OF

## TEAMSTERS • CHAUFFEURS • WAREHOUSEMEN & HELPERS OF AMERICA

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"32.3 disciplinary action in accordance with the provisions of the existing agreement."

The basis for charge No. 1 stems from the fact that the Patrolman was allegedly told by his superiors that he was not to talk to anyone unnecessarily, while on duty. Carrier's witnesses allege that shortly after they allegedly told the Patrolman not to engage in unnecessary conversation with anyone they observed him talking with the young woman for about 15 minutes. However, assuming he did what the Carrier alleges, it was done while he was on meal break thus no violation occurred as he was not subject to their instructions while on meal break.

Our position is further buttressed by the testimony of Carrier's own witnesses. For example, on page 9 of the transcript the following exchange is found:

Q. Let the record indicate that Sergeant Matthaedi had knowledge that Ptl. Maddaloni's meal period was at 7:30 PM and that Ptl. Maddaloni did go to meal at 7:30 PM. At 7:30 PM, subsequent to Ptl. Maddaloni calling off for meal, you stated



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Q. in paragraph three of your report that you observed Ptl. Maddaloni in the company of above mentioned female in the parking lot where they engaged in conversation for a period of fifteen minutes.

A. That's correct.

Q. To your knowledge, is that any violation of the Rules and Procedures?

A. To my knowledge no, if he is on meal.

With regard to the second part of the charge on which the Carrier has unjustly discharged Patrolman Maddaloni it is the Brotherhood's position that there can be no violation of the terms of the Sick Leave Agreement until the individual has made claim for pay thereunder. The Patrolman was off only one day account this illness thus made no claim for pay under the Agreement. It naturally follows, therefore, that he has not violated its terms.

In the instant case the Carrier has made much of the admitted fact that the Patrolman did not arrive home until 1:23 AM the following morning though he had marked off sick at 8:25PM. The record



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shows the Claimant had a long distance to drive from his work location to his home and that, on the way, he became so ill he had to stop for rest.

The Brotherhood emphatically denies that Patrolman Maddaloni in any way failed to comply with the Manual of Procedure or that he was in any way insubordinate, disrespectful or failed to follow proper procedure before or after he became ill on the evening of May 18, 1972. What is more important, the Carrier has failed to prove otherwise.

Under these circumstances the Brotherhood requests that this Board reach a determination consistent with its position and render an award restoring Patrolman Maddaloni to his rightful position with full seniority rights and pay for all time lost.

Very truly yours,

M. Greene  
President

150  
GREENE EXHIBIT H

5 Juniper Court  
Coram, New York 11727  
September 17, 1973

Mr. John Mahoney, Sec.  
Local Union 808, I.B.T.  
62-17 Northern Blvd.  
Woodside, New York 11377

Dear John,

I understand that the man in charge of Public Law Board #10, I believe his name is Mr. Rosenberg, who heard an appeal by Marty in my behalf has made a decision and sent copies of the decision to you and the Long Island Rail Road stating that I should be reinstated.

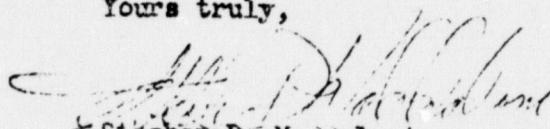
Having had no prior knowledge that an appeal would be or was held, I would like to take the opportunity at this time to thank you and Marty and everybody else concerned for the fine efforts made in having me cleared of those false charges and in obtaining my job back for me.

Since I have not heard from the L.I.R.R. P.D. as yet I would like you to tell me when I should return to work and when and if I will receive my back pay.

I attempted to contact you last week and left messages with your secretary. I realize that you and Marty are very busy but I would appreciate a reply to this letter as soon as possible.

Awaiting your speedy reply, I remain,

Yours truly,

  
Stephen D. Maddaloni

CERTIFIED/RETURN RECEIPT



AFFIDAVIT OF MADDALONI IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
-----

STEPHEN D. MADDALONI,  
  
Plaintiff,

Civil Action  
No. 74 C 81

- against -

AFFIDAVIT IN  
OPPOSITION

LONG ISLAND RAILROAD, W.L. SCHLAGER, JR.,  
LOCAL 808 INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFERS, WAREHOUSEMEN and  
HELPERS OF AMERICA, M. GREENE and JOHN  
MAHONEY,

Defendants.  
-----

STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss:

STEPHEN D. MADDALONI, being duly sworn,  
deposes and says:

1. I am the plaintiff in this action and  
make this affidavit in opposition to the motion of  
defendants for Summary Judgment.

2. The essence of my complaint in this  
action is that my employment with the Long Island  
Railroad (hereafter referred to as the "Railroad") as  
a railroad police officer was wrongfully terminated by  
the Railroad and the hearings and arbitration proceed-  
ings were grossly unfair and void of any reasonable  
standard of due process.

## AFFIDAVIT OF MADDALONI IN OPPOSITION TO MOTION

3. The administrative remedies provided for both in the contract between the Railroad and Local 808 of the International Brotherhood of Teamsters, Chauffers and Warehousemen, (hereafter referred to as the "Union") have been exhausted.

4. It is your deponent's contention, however, that the administrative hearings did not provide the slightest semblance of due process. There is more than ample evidence to indicate that the Union and the Railroad were working hand in glove in a conspiracy to further their own efforts and to the prejudice of myself and other employees of the Railroad, similarly situated.

5. As an example of this lack of due process, I state to this Court that I was never notified of the administrative hearings held on May 31, 1973. The allegation of Martin S. Greene in support of this motion (Greene affidavit, page 3, bottom) that Greene "promptly wrote Mr. Maddaloni advising him" of the date and place of the arbitration is a bold-faced misrepresentation of the facts. I was never notified of this hearing either in writing or orally by anyone, either on behalf of the Union or on behalf of the Railroad. The letters submitted as Exhibits E and F of the said



## AFFIDAVIT OF MADDALONI IN OPPOSITION TO MOTION

Greene affidavit were never received by your deponent.

6. I feel it significant in this respect that I point out to the Court that I wrote two letters by certified mail to the Union requesting them to advise me of the date of the hearing and advising them that I wished copies of all the papers submitted by the Union on my behalf. I enclose copies of these letters and the receipts therefor as Exhibits A and B. Knowing of my concern, it seems inconceivable to me that the Union would have addressed these alleged notices of arbitration to me in any manner less than certified mail.

7. It is also inconsistent with the general procedures followed by the Union in notifying members of significant actions pending. For instance, when my dues were delinquent I was notified of the delinquency by certified mail. The decision of the arbitrator, which forms the basis of this suit, was sent to me by the Union via certified mail. In addition, I have been advised by other persons who have had similar arbitrations that the notice they received was sent to them via certified mail.

Again I emphasize that I never received notice of the arbitration and the letters which the

## AFFIDAVIT OF MADDALONI IN OPPOSITION TO MOTION

Union asserts it has sent me appear to never have been sent or were concocted for the purposes of this motion.

8. Further, it seems inconceivable that knowing of my concern and request to be present, that the Union could have proceeded at the arbitration without my being present and without having at least made a strong protest to the arbitrator regarding my absence. However, the arbitrator's report, Exhibit J to the moving affidavit of John J. Ward, makes no mention of such complaint and merely skims over the fact that "Maddaloni failed to appear and consequently no testimony was taken from the grievant".

9. The Railroad cannot escape liability for such notice either. It is inherent in the Collective Bargaining Agreement (see Exhibit A to the moving affidavit of John J. Ward), paragraph 6-C-1(a), page 14, that "an employee who is accused of an offense and who is directed to report for trial therefor, will be given reasonable advance notice, in writing, of the exact offense for which he is to be tried and the time and place of trial". It would indeed be an absurd situation if the Railroad were not under the same duty to notify the employee of the time and place for subsequently scheduled appeals of that trial.



## AFFIDAVIT OF MADDALONI IN OPPOSITION TO MOTION

10. At no time during the course of the administrative proceedings was I ever advised of my rights to be represented by an attorney of my choice or a person other than the Union representative. In fact, I was specifically told that I had no choice in the matter of representation and that the Union would be my representative whether I liked it or not.

11. It further appears that the arbitrator, in making his decision without my having been present, relied on transcripts of prior disciplinary actions taken by the Railroad against me. I have no way of telling how much reliance the arbitrator placed on these prior disciplinary actions, but it certainly appears that he was not aware that the officer conducting those earlier hearings had reviewed the transcript thereof and had found that there were numerous omissions in the said transcript due to stenographic errors.

12. The representation provided by the Union was less than adequate and was not handled by a person sufficiently competent to defend such matters. Because of the generally poor quality of the representation provided for by the Union in such hearings, both in this case and numerous other cases and because of an overall poor quality of representation provided for by

## AFFIDAVIT OF MADDALONI IN OPPOSITION TO MOTION

the Union, the railroad police dropped the Union as their bargaining agents. This poor level of representation was so bad as to suggest that a hand in glove arrangement existed between the Railroad and the Union whereby the outcome of grievances was arranged prior to the presentation of evidence at a hearing.

13. As further evidence of the hand in glove relationship between the Railroad and the Union, I submit that even in defense of the action at bar and prosecution of this motion the Union has deferred to the Railroad and the Railroad's counsel. It is apparent from the identical nature of the answers submitted by the Union and the Railroad that one was copied from the other. It is also more than obvious that the affidavit of Martin S. Greene, the president of the Union, was drawn up by the same attorneys that drew up the affidavits of John J. Ward and Harry C. Cook of the Railroad. While I understand it is not uncommon for parties joined as defendants to submit documents in conjunction with one another in an effort to obtain a mutually desired objective, such as a motion to dismiss, it seems peculiar that parties as supposedly antagonistic as the Railroad and the Union normally are, should be



AFFIDAVIT OF MADDALONI IN OPPOSITION TO MOTION

represented by the same counsel.

WHEREFORE, plaintiff requests this motion be dismissed.

---

STEPHEN D. MADDALONI

Sworn to before me this  
10th day of April, 1974.

---

ALFRED F. KOLLER, JR.

SEAL

## MADDALONI EXHIBIT A

Stephen D. Maddaloni  
5 Juniper Court  
Coram, New York 11727  
February 27, 1973

Mr. Martin Greene, Pres.  
Local Union 808, I.B.T.  
62-17 Northern Blvd.  
New York, New York 11377

Dear Marty,

In our conversation this date, you stated that a neutral board had been set up on my behalf. Due to the fact that the decision of this neutral will affect my entire life, I hereby inform you that I wish to be present at any and all hearings.

I also request that any and all briefs and all memorandums pertaining to my defense be made in duplicate and a copy sent to me, so that I may add anything that may be beneficial to my case.

I request that you notify me at least two days prior to any hearings of the exact time and location of such hearings so that I can make any necessary travel arrangements.

I also request that if at all possible a meeting be arranged at your convenience so that you and I may set up the best possible defense.

Of course it is understood that any travel arrangements to any location for myself will be paid at my own expense.

Thanking you in advance for your full cooperation with the above requests, I remain

Very truly yours,

REGISTERED - RETURN RECEIPT

446113

Stephen D. Maddaloni  
(516) 473-6506 or (516) 732-3379



## MADDALONI EXHIBIT A

## RECEIPT FOR CERTIFIED MAIL—30 (Postage)

SENT TO  
MR. MARTIN GREENE JR.STREET AND NO.  
62-17 NORTHERN BLVCITY, STATE AND ZIP CODE  
WOODSIDE NY 11377

OPTIONAL SERVICES FOR ADDITIONAL FEE

RETURN 1. Shows to whom and date delivered... Use  
 RETURN 2. Shows to whom and date delivered... Use  
 RETURN 3. Shows to whom and date delivered... Use  
 RETURN 4. Shows to whom and date delivered... Use  
 RETURN 5. Shows to whom and date delivered... Use  
 RETURN 6. Shows to whom and date delivered... Use  
 RETURN 7. Shows to whom and date delivered... Use  
 RETURN 8. Shows to whom and date delivered... Use  
 RETURN 9. Shows to whom and date delivered... Use  
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 RETURN 25. Shows to whom and date delivered... Use  
 RETURN 26. Shows to whom and date delivered... Use  
 RETURN 27. Shows to whom and date delivered... Use  
 RETURN 28. Shows to whom and date delivered... Use  
 RETURN 29. Shows to whom and date delivered... Use  
 RETURN 30. Shows to whom and date delivered... Use

NO INSURANCE COVERAGE PROVIDED— (See other side)  
 NOT FOR INTERNATIONAL MAIL \* GPO : 1972 O - 460-742

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)  
(Additional charges required for these services)☐ Show to whom, date and address  
where delivered☐ Deliver ONLY  
to addressee

## RECEIPT

Received the numbered article described below

REGISTERED NO.

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

LOCAL 808 FBI

CERTIFIED NO.

446113

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

INSURED NO.

DATE DELIVERED

3/2/73

SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

## MADDALONI EXHIBIT B

5 Juniper Court  
Coran, New York 11727  
March 14, 1973

Mr. Martin Greene, Pres.  
Local Union 808, I.B.T.  
62-17 Northern Blvd.  
Woodside, New York 11277

Dear Marty,

As I have not heard from you concerning my letter of February 27, 1973 I find it necessary to write to you again. I ask you to please contact me immediately in compliance to my requests in the above mentioned letter.

I am sending carbon copies of these letters to John so that he may assist us in any way possible.

Again thanking you in advance, I remain,

Very truly yours,

Stephen D. Maddaloni  
(516) 473-6506 or (516) 732-3379

CERTIFIED - RETURN RECEIPT

519338



## MADDALONI EXHIBIT B

## RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

579338

SENT TO <i>Mr. Greene, Pres.</i>	POSTMARK OR DATE <i>MAR 14 1973</i>
STREET AND NO. <i>Local 808, 1BT, 62-17 No. Blvd.</i>	
CITY AND ZIP CODE <i>Woodside, NY 11377</i>	
OPTIONAL SERVICES FOR ADDITIONAL FEES	
RETURN RECEIPT SERVICE <input checked="" type="checkbox"/> 1. Shows to whom and date delivered. With delivery to addressee only. 5¢	
SURETY SERVICE <input type="checkbox"/> 2. Shows to whom, date and where delivered. With delivery to addressee only. 85¢	
DELIVER TO ADDRESSEE ONLY <input type="checkbox"/> 50¢	
Total 30.00 (See other side)	
GPO: 1970 O-27-487	

## CHECK: Do not to follow instructions checked on

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)  
(Additional charges required for these services)

☐ Show to whom, date and address where delivered

☐ Deliver ONLY to addressee

## RECEIPT

Received the numbered mail described below

REGISTERED NO.

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

CERTIFIED NO.

579338

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

INSURED NO.

Local 808

DATE DELIVERED

3/15/73

SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

## MEMORANDUM AND ORDER

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT

----- X  
STEPHEN D. MADDALONI,

MAY 13 1974

Plaintiff,

TIME A.M. 74 C 81

-against-

P.M. MEMORANDUM

LONG ISLAND RAIL ROAD, et al.,

and  
ORDER

Defendants.  
----- X

M' FILMED

The papers submitted in support of the motion for summary judgment would unanswerably entitle defendants to summary judgment on the familiar 45 U.S.C. § 153 Second and First (q) ground but for the assertion of a failure to comply with the requests of plaintiff's February 27, 1973, and March 14, 1973 letters. It could be said that the plaintiff has simply asserted a failure to receive notice of the hearing and that there was no failure to send correctly addressed notices to the plaintiff, but it would, no doubt, be better to have a hearing on that dispositive issue. The plaintiff's remaining assertions of unfairness etc. are demonstrably devoid of merit as the record of proceedings establishes.

Hearing date: 10 A.M. May 14, 1974.

It is

ORDERED that decision of the motion for summary

7



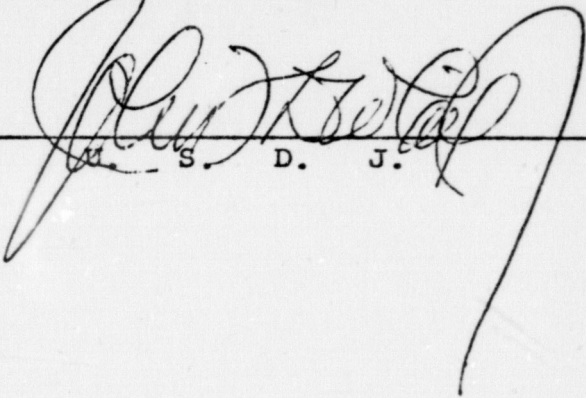
## MEMORANDUM AND ORDER

2.

judgment is held in suspense pending the hearing to be held on the issue of the mailing and receipt of the Local's letters of May 17, 1973 and May 24, 1973.

Brooklyn, New York

May 10, 1974.

  
M. S. D. J.

TRANSCRIPT OF HEARING ON MAY 14, 1974  
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

STEPHEN MADDALONI,

-against-

LONG ISLAND RAILROAD,

Defendant.

:

:

746 81

:

:

United States Courthouse  
Brooklyn, New York  
May 14, 1974  
10:30 a.m.

B e f o r e :

HONORABLE JOHN F DOOLING, JR., U.S.D.J.

FRANCES KARR  
ACTING OFFICIAL COURT REPORTER



## APPEARANCES:

2

ALFRED F. KOLLER, ESQ.,  
Attorney for Plaintiff

GEORGE M. ONKEN, ESQ.,  
Attorney for L.I.R.R.

BY: RICHARD H. STOKES, ESQ.,  
Of Counsel

HASKELL WOLF, ESQ.,  
Attorney for Defendant Union

\* \* \* \*

1 THE COURT: Who shoots first, do you suppose?

2 MR. KOLLER: I do not know.

3 MR. STOKES: We are ready to proceed with our  
4 witnesses, your Honor, to show that the notice was  
5 mailed out.

6 J O H N W A R D, having been first duly sworn  
7 by the Clerk, took the witness stand and testified  
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. STOKES:

11 Q By whom are you employed and in what capacity,  
12 Mr. Ward?

13 A Long Island Railroad and I am manager of  
14 labor relations.

15 Q In that capacity, briefly, what are your  
16 duties and responsibilities?

17 A I act as representative of final appeals office  
18 on the property and all minor or major disputes for  
19 arbitration proceedings at the public law board, national  
20 railroad adjustment board.

21 Q Did you handle on behalf of the railroad the  
22 arbitration appeal of Mr. Maddaloni, the plaintiff herein?

23 A Yes, I did.

24 Q Would you describe Mr. Ward briefly how the  
25 public law board came to be set up and the date for the



Ward - direct

4

1 arbitration established?

2  
3 A After the final appeal decision was rendered  
4 on the property, the organization desired to appeal from the  
5 property to a public law board.

6 We arranged mutually to select a referee and  
7 petitioned the national mediation board to establish the  
8 board and certify the referee.

9 When the referee was certified we contacted the  
10 referee and he set up a date which was originally scheduled  
11 for the whole day at the LaGuardia Airport on May 24, 1973.

12 Q On May 24, 1973, did you go over to meet the  
13 arbitrator?

14 A Yes, sir.

15 The arbitrator had called us and told us he  
16 was arriving at 10:48 o'clock on the Allegheny Airlines from  
17 Baltimore and we told him we would pick him up and bring  
18 him over to the Holiday Inn.

19 On that day I had a police car with Captain Cook  
20 who was in charge of the police department and a detective  
21 named Robert Evans and en route to the airport we received  
22 a radio call telling us that the referee would be delayed  
23 because of engine trouble and we then proceeded immediately  
24 to the Holiday Inn.

25 Upon arrival at the Holiday Inn I went inside  
and phoned the office and confirmed that Mr. Rosen had called

Ward - direct

5

and that he would be delayed.

Mr. Green then appeared and I told him about the delay in the arrival of the referee and he said, "Well, it is just as well because nobody else is here yet."

THE COURT: Because of what?

THE WITNESS: It is just as well as no one else is here yet. He said that he expected Mr. Maddaloni and Mr. Lucente and possibly their attorneys would be present.

THE COURT: I did not get all those names.

THE WITNESS: Mr. Maddaloni and Mr. Lucente. He was the defendant in another case before the same public law board.

THE COURT: You mean in another case?

THE WITNESS: That is right, there were two cases.

THE COURT: Two cases for arbitration but not related.

THE WITNESS: No, sir, they were not related, they were two separate individual cases.

THE COURT: The third name was "maybe their lawyers?"

THE WITNESS: And possibly their attorneys would be present.



Ward - direct

6

1  
2 Q Would you identify Mr. Green for the record,  
3 please?

4 A Mr. Green is the president of local 808.

5 Q That is the union that was representing  
6 Mr. Maddalon and Mr. Lucente?

7 A Yes, sir, the Brotherhood of Railroad Teamsters.

8 Q Did you subsequently have a telephone conver-  
9 sation with Mr. Rosen?

10 A After we were at the hotel awhile we got  
11 another call, this time directly from Mr. Rosen who announced  
12 he could not make it. The plane was so late that he could  
13 not possibly make it that day and would reschedule another  
14 date.

15 Q Mr. Rosen is the arbitrator?

16 THE COURT: And he was coming from?

17 THE WITNESS: Baltimore.

18 Q Mr. Rosen is the arbitrator, is he not?

19 A Yes, sir.

20 We then scheduled the following week, Friday,  
21 the 31st, for the revised real hearing.

22 Q Friday or Thursday?

23 A 31st is a Friday, I believe, sir, I believe  
24 it was a week later. The 24th was a Friday -- I don't have  
25 a calendar.

Ward - direct

7

MR. STOKES: I think we can agree the record will show the 24th and the 31st of May, 1973, were Thursdays.

MR. KOLLER: It was Thursday.

Q After receiving the call from Mr. Rosen on the 24th at the Holiday Inn, what occurred?

A I sent the police car or the police van back with Captain Cook and Detective Evans and I remained at the hotel with Mr. Green because he felt he should stay around awhile because these people would possibly show up and he would like to tell them then if there was a change.

We stayed at the Holiday Inn until 1:00 o'clock that day.

Q Then subsequently on May 31, what occurred?

THE COURT: Then I take it no one came?

THE WITNESS: I did not see anyone at all show up, sir, no, sir.

Q Subsequently, on May 31, what occurred?

A On May 31, the public law board was held as scheduled with the referee and my witnesses and during the course we held Mr. Lucente's case first, I believe. I may be wrong.

THE COURT: Mr. Lucente's case?

THE WITNESS: We had two cases and I believe it



Ward - direct

8

was Mr. Lucente's case that was heard first and during the course of the case Mr. Lucente showed up and was allowed to testify.

Q He showed up with his attorney?

A No, he came alone, sir.

MR. STOKES: I have no further questions of the witness.

CROSS EXAMINATION

BY MR. KOLLER:

Q Mr. Ward, would you describe in brief generalities what transpired at the public law board at a hearing such as was scheduled?

A Well, both parties have written briefs that are submitted to the referee. Both parties are allowed to respond and answer the other party's brief and from there it is up to the individual referee to conduct it.

Q May further evidence be offered in the way of testimony?

A No, sir, it is all argued right on the brief.

Q There is no further testimony taken?

A Not unless the referee makes a deviation from the rules.

Q Didn't you state you had witnesses?

A I had people there as witnesses to corroborate

1  
2 whatever testimony the referee may ask but they were asked at  
3 this time certain questions by the referee but the same as  
4 Mr. Lucente was allowed to testify also.

5 Q Did you notify Mr. Maddaloni of the hearing?

6 A No, sir, I did not. It is not my custom or  
7 practice to do that.

8 Q Do you know if anyone on behalf of the railroad  
9 notified Mr. Maddaloni of the hearing?

10 A Not on the part of the railroad, no, sir.

11 Q Did you notify Mr. Maddaloni of the postponed  
12 hearing?

13 A No, sir.

14 Q Did anyone of behalf of the railroad notify  
15 Mr. Maddaloni of the postponed hearing?

16 A Not on behalf of the railroad, no, sir.

17 Q Did you receive sometime prior to the 24th  
18 notice that Mr. Maddaloni had commenced an action before the  
19 State's Human Rights Commission?

20 A I couldn't answer that truthfully, sir.

21 I know of his action before the Human Rights  
22 Commission but then whether it was prior or subsequent to it  
23 I cannot answer it.

24 Q Who represented the union or Mr. Maddaloni at  
25 that hearing?



1  
2 A The union --

3 THE COURT: What was your answer to the state-  
4 ment as to the State Human Rights Commission?

5 THE WITNESS: I could not truthfully answer  
6 whether or not I knew of his action before the Human  
7 Rights Commission that I could not say I learned of  
8 it prior to the public law board or subsequent to the  
9 public law board.

10 Q Who represented Mr. Maddaloni at that hearing?

11 A Mr. Green of the teamsters.

12 THE COURT: At the hearing.

13 Q At the public law board hearing on the 31st?

14 A Yes, sir.

15 Q Did Mr. Green at that time make any objections  
16 based on the failure of Mr. Maddaloni to be present?

17 A No, sir.

18 Q He made no objection?

19 A He did say he expected him to be there but he  
20 argued for him.

21 Q But no objection has been made to proceeding  
22 without Mr. Maddaloni's presence?

23 A No, sir.

24 MR. KOLLER: No further questions.

25 (continued.)

Ward - redirect

11

## REDIRECT EXAMINATION

BY MR. STOKES:

Q Mr. Ward, is it the normal practice of the railroad to notify the individual person of pending arbitration?

A No, sir.

Q Whose responsibility is that?

A That is the organization's responsibility.

Q And at arbitration proceedings is it normal that the affected individual show up there or just his union representative?

A In most instances just the representative.

MR. STOKES: I have no further questions.

## RE CROSS EXAMINATION

BY MR. KOLLER:

Q Are there any provisions in the contract in existence between yourself and the union at that time which requires the railroad to give employees notice of grievance hearings?

A Just the organization, sir. The organization is acting as the attorney for the employee.

Q There is nothing as to that in the contract requiring notice be served --

THE COURT: Could you, Mr. Koller, tell me what contract we are talking about now?



1  
2 MR. KOLLER: There is a contract between the  
3 union --

4 MR. STOKES: Well, for clarification if I may,  
5 your Honor, the applicable contract at this time was  
6 between the railroad and the United Transportation  
7 Union. At the particular point of time involved here  
8 local 808 of the teamsters has succeeded as the  
9 bargaining representative of these employees and under  
10 the railway law until a new contract was signed the  
11 UTU contract continued and covered these individuals.

12 THE COURT: In other words, it is still subject  
13 to section six rules?

14 MR. STOKES: Yes, your Honor, under the Railroad  
15 Labor Act, a labor contract has no end, it is in  
16 perpetuity until it is modified and changed in accordance  
17 with sections six of the act so it actually would be  
18 the UTU contract that is annexed to our moving papers.

19 THE COURT: Are we in agreement on that?

20 MR. KOLLER: Your Honor, I believe we are.

21 (continued next page.)  
22  
23  
24  
25

Ward - recross

13

1  
2 THE COURT: The reason I asked is that we have  
3 a set of papers that seem to go back to 1953, and I  
4 thought maybe that was reaching a little far back but  
5 if I read them with care I would find out then that they  
6 all are linked together.

7 MR. KOLLER: This agreement was in effect at  
8 the time by incorporation.

9 MR. STOKES: There was in process at the time  
10 negotiations for a new agreement which ultimately was  
11 reached and superseded this, but the UTU agreement  
12 that is annexed to the moving papers was the controlling  
13 contract at the time.

14 THE COURT: That is the one that I have with  
15 the papers?

16 MR. KOLLER: Yes, your Honor.

17 THE COURT: I think I have it in the right  
18 area.

19 MR. KOLLER: You have it on the right paragraph.

20 MR. STOKES: In regard to your question to  
21 Mr. Ward, Mr. Koller, you were asking whether the  
22 contract required the railroad to give notice of a  
23 grievance.

24 Are you talking in terms of the initial charges  
25 that must be signed?



Ward - recross

14

1  
2 MR. KOLLER: I am asking Mr. Ward the questions  
3 and maybe we can get clarification.

4 MR. STOKES: There is a certain amount of  
5 confusion here, your Honor. We are talking basically  
6 in terms of the arbitration proceeding and I am not  
7 sure Mr. Koller's question was directed to that or  
8 whether it was so directed to giving notice of the  
9 initial charges.

10 THE COURT: I think he says we will take it  
11 one step at a time? Is that it?

12 MR. KOLLER: Well, I would like to continue my  
13 questioning.

14 Q Mr. Ward, I would like to show you page 14 of  
15 the agreement annexed to the moving papers. The agreement,  
16 the mediation agreement is between the United Transportation  
17 Union and the Long Island Railroad Company.

18 Did this agreement contain the general working  
19 rules which you followed in your handling of employee relations  
20 with the police department of the Long Island Railroad?

21 A Yes, sir.

22 Q At the time?

23 A Yes, sir.

24 Q Then I would like to refer you to page 14 of  
25 that agreement.

Ward - recross

15

MR. KOLLER: Need I introduce it in evidence, your Honor, it is on the moving papers?

THE COURT: I think we can deem it in evidence because I do not think you challenged it as I recall.

MR. KOLLER: No.

Q I refer you to page 14 which has a side column heading entitled "advance notice."

I just ask if you would read it into the record, please.

A One thing first, this is a trainman's agreement. There's a police section, under the UTU, that had their own agreement.

THE COURT: Could you talk up?

THE WITNESS: This is the trainmen's agreement although basically it says that --

MR. STOKES: I want to object to this line of questioning, your Honor, because what we are talking about and what Mr. Koller is referring to is noticed advance notice of trial on the property.

This is the trial that is actually held on the property. What is at issue is the notice in regard to the arbitration and this is completely --

THE COURT: I am perfectly clear on that but the line of --



1  
2 MR. STOKES: The line of questioning is com-  
3 pletely immaterial to what is at issue before your  
4 Honor.

5 THE COURT: If this man wants to build a wall  
6 of some sort, let us see how high he gets it.

7 Q Would you please just read that one paragraph  
8 into the record?

9 THE COURT: He started to say this would go  
10 on the trainman case.

11 THE WITNESS: This is basically the same  
12 agreement but when you refer to employees anywhere in  
13 these agreements you are referring to the employee or  
14 his representative, his duly accredited representative  
15 on any of these contracts is the organization repre-  
16 senting him.

17 When we refer to this paragraph C, "an employee  
18 who is accused of an offense and who is directed to  
19 report for a trial therefor will be given reasonable  
20 advance notice in writing of the exact offense for  
21 which he is to be tried and the time and place of  
22 the trial and copy of such notice to be furnished to  
23 the general chairman," we have complied with that part  
24 of that agreement.

25 THE COURT: Is that one of the charges in there?

1  
2 MR. STOKES: The notice of the charges and the  
3 date of the initial trial is Exhibit B to the moving  
4 papers.

5 THE COURT: I think that is in there, Mr. Koller.

6 MR. KOLLER: Your Honor, what I am attempting  
7 to lead up to is the fact that they have taken pains  
8 in these agreements to provide notice to the employee.  
9 It seems an almost absurd interpretation to place on  
10 this, that notice of appeal or notice past the filing  
11 hearing which Mr. Stokes refers to as on the premises,  
12 is the only notice they have to give to the employee.

13 I maintain that the employee is entitled to  
14 follow this thing completely throughout right up and if  
15 it goes to the Supreme Court, he is entitled to have  
16 notice of that, too, and it is strange to interpret  
17 this as narrowly so as to only apply to the first trial.  
18 It is really twisting the intention of the agreement  
19 out of context.

20 THE COURT: I understand your point.

21 MR. STOKES: May I respond to Mr. Koller's  
22 argument in regard to the requirements of this contract,  
23 your Honor?

24 THE COURT: Well, I take it you take the position  
25 that Mr. Ward has expressed?



Ward - recross

18

1  
2 MR. STOKES: Mr. Ward has testified already that  
3 it is the complete practice of the railroad in all  
4 instances under all of the contracts to only give  
5 notice of the initial charges and that we do not give  
6 notice of the arbitration.

7 THE COURT: Let me ask if a man wishes to handle  
8 his own grievance himself, is he permitted to do so?

9 MR. STOKES: That depends on the particular  
10 contract. Some of the contracts require representation  
11 only by the union. Other contracts permit representation  
12 where the man can come with his own attorney and be  
13 represented in that manner.

14 I am not sure which this --

15 THE COURT: What I am after is simply this, that  
16 if a man under the agreement has the right to appear  
17 pro se, is it within the proceeding on the property or  
18 may he do so and if he wishes to appear through his  
19 union representative, I take it that he also may do so?

20 MR. STOKES: That the underlying trial on the  
21 company property the man --

22 THE COURT: On the property.

23 MR. STOKES: On the property.

24 THE COURT: That is the first trial after the  
25 man's supervisor puts him to trial.

1  
2 MR. STOKES: That is right.

3 THE COURT: By the proper charge.

4 MR. STOKES: The man has the opportunity at that  
5 time to object to the union representative if he wishes  
6 to represent himself.

7 THE COURT: So that he could, for example, I  
8 was just thinking that there may be certain cases where  
9 a man might not quite see eye to eye with his Local  
10 and might want to or a few other such odd cases.

11 MR. STOKES: In this instance the trial record  
12 before the company trial officer indicates that no  
13 exception was taken to the representation by the union.

14 That Mr. Maddaloni was present and he did not  
15 take any exception to the union representative.

16 MR. KOLLER: No further questions.

17 MR. STOKES: To further respond to Mr. Koller's  
18 characterization here as I indicated, the uniform  
19 practice of the railroad as Mr. Ward testified, is on  
20 the appeal level that it is the responsibility of the  
21 individual's representative to give the notice.

22 We give the notice to the union who is his  
23 representative. We do not give the notice to the  
24 individual.

25 THE COURT: That is all he wants to know.



Ward -

20

MR. STOKES: That is the custom and practice in the industry as well as the uniform practice on the Long Island, and I believe this is then what Mr. Ward has testified to.

MR. KOLLER: May I cross examine Mr. Stokes?

MR. STOKES: Mr. Wolf will present the witnesses from the union if Mr. Ward is excused.

MARTIN GREENE, having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. WOLF:

Q Mr. Greene, what is your occupation?

A President, Local 808, National Brotherhood of Teamsters.

Q How long have you held that position?

A Approximately 7 years.

Q You have heard the testimony of Mr. Ward this morning. Are you familiar with the proceedings involved in Mr. Maddaloni's disciplinning and subsequent discharge?

A Yes, sir.

Q Were you present on May 24 at the Holiday Inn?

A Yes, sir.

Q Can you tell us what transpired that day?

A Well, I met Mr. Ward and he notified me, he

Greene - direct

21

got a call on the police car, he told me -- he came over in a police car -- that he had gotten a call that the arbitrator was going to be delayed, Mr. Rosen, if I am not mistaken.

We waited around and subsequently, if I recall, we got a call at the hotel that he was grounded and couldn't make it.

Q What did you do then?

A Well, I felt that Mr. Maddaloni and Mr. Lucente would show up and I said I want to stick around and wait and I do not want to have them come to an empty hearing room. So we waited until about 1:00 o'clock and during that time, if I recall, this was some time ago, I think the telephone conversation -- that is Mr. Ward then had a telephone conversation with Mr. Rosen, setting up a date at that time, and I think it was Thursday, the 24th, whatever day it was, and then we left.

THE COURT: Neither Mr. Lucente or Mr. Maddaloni appeared?

THE WITNESS: They did not appear at that time, no, sir.

Q In the proceeding that took place on the property of the Long Island Railroad prior to this arbitration hearing that was scheduled, did you participate in that proceeding?

A I really cannot recall, possibly in some of



Greene - direct

22

1  
2 them or there was some other representative down there but  
3 I believe there was a gentleman, Mr. Mahl, who might have  
4 represented them. I can't remember whether I represented  
5 him in the proceedings prior to the arbitration.

6 Q In those proceedings on the property, was  
7 Mr. Maddaloni represented by someone from the union?

8 A Yes, sir, he was definitely.

9 (continued next page.)  
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Q Did he appear at each of those proceedings?

A I would assume so, yes.

Q When the final decision was made by the railroad as to Mr. Maddaloni's discipline, did the union propose that this man be brought to arbitration?

A Yes.

Q Was Mr. Maddaloni notified of this fact?

A To my knowledge, yes.

Q How was he notified?

A We had the girl send him a notification, send him a letter.

Q Advising him?

A He was aware there was an appeal because he had made numerous telephone calls. I think he sent some correspondence with respect to it.

Q Telephone calls to him?

A He called the office and I think I talked with him once or twice. I know he talked with Miss Entress.

Q After this arbitration that was postponed from May 24, you stated that another arbitration was rescheduled?

A For the following week.

Q Was Mr. Maddaloni notified?

A To the best of my knowledge, yes.

Q How was he notified?



1  
2 A I work in the field and I do not get into the office  
3 every day, maybe once a week if I can get there. Most of the  
4 business transactions I do by telephone.

5 Generally, what I do if I want some particular piece  
6 of correspondence out, I call the girl and say, "Would you  
7 send a letter with reference to --" and she has the file and  
8 she does it.

9 Q On May 31, which was the adjourned date of that  
10 arbitration, what proceedings were held on that day, if any?

11 A On the 31 there were two arbitrations, one on  
12 Mr. Maddaloni and one on Mr. Lucente.

13 Q Was Mr. Lucente's arbitration held?

14 A Yes, and Mr. Lucente appeared.

15 Q And was Mr. Maddaloni's held?

16 A Yes.

17 Q Was he present?

18 A No, he did not show up.

19 Q In the management of these arbitrations, does  
20 the union or the company produce witnesses to testify as to  
21 what happened?

22 A Yes, either party can bring witnesses, can  
23 present witnesses.

24 Q Do they testify on the basis of the record  
25 made previously?

A Yes, unless there is new evidence.

Greene - direct

25

1  
2 MR. WOLF: I have no further questions.

3 MR. STOKES: There is a question of procedure,  
4 your Honor. The notification letters from Mr. Greene  
5 to Mr. Maddaloni are annexed to the moving papers.

6 Is it necessary to have them marked in evidence  
7 and by this witness?

8 THE COURT: Not yet, that is the issue at the  
9 moment.

10 MR. STOKES: I was wondering if it would be  
11 appropriate that the letters be identified and marked.

12 THE COURT: Well, if Mr. Brown can do it, but  
13 I doubt it from what he has said that he was not  
14 responsible for the dispatching of the letters.

15 Is that right, Mr. Greene?

16 THE WITNESS: I did it by telephone.

17 THE COURT: You would have directed they be sent  
18 out?

19 THE WITNESS: Yes.

20 THE COURT: But did you check to see whether  
21 they had been sent out?

22 THE WITNESS: There were copies in my file.  
23 If there were copies, I assumed and when I looked at  
24 it I assumed that they had been mailed out.

25 THE COURT: You can have him testify to that much.



Greene - direct

26

That puts them in the Union's office. I do not know if this exactly puts them in Mr. Maddaloni's hands.

Q I show you this letter dated May 17, 1973. Would you state the substance of that letter, please, for the record?

A It is to Mr. Maddaloni and states: "Your appeal to the arbitrator has been set down for May 24, 1973, at 11:00 o'clock at the Holiday Inn, LaGuardia Airport. If you have any questions concerning the above, please contact this office."

That was sent on May 17.

"If you have any questions concerning the above, please contact this office."

MR. WOLF: I offer this as Defendant's Exhibit A.

MR. KOLLER: No objection.

THE CLERK: Defendant's Exhibit A in Evidence.

THE COURT: Is this the office copy?

MR. WOLF: It is the copy of the office. They use a photocopy machine to make duplicate copies of all correspondence. That machine was replaced.

MR. KOLLER: I object to counsel testifying.

THE COURT: All I asked is whether this is the office copy of the letter or what.

THE WITNESS: That would be the office copy, yes, sir.

Greene - direct

27

THE COURT: It seems to have a handwritten signature. Can you tell me sir, whose that is?

THE WITNESS: There are times that the girl will put under my signature if I am not there --

THE COURT: Your name.

THE WITNESS: Is maybe, I can hardly make it out, your Honor. Possibly it is mine.

THE COURT: It is the name Greene, but you cannot say whether you signed it or the young woman in the office signed it?

THE WITNESS: I really couldn't, I can hardly see it.

Q I show you now this letter dated May 24. Would you read that please, for the record?

A It is to Mr. Maddaloni: "Dear Sir: Your scheduled appeal for today, Thursday, May 24, is postponed by the main arbitrator for reasons best known to him. The appeal is rescheduled for Thursday, May 31, at 11:00 a.m. at the Holiday Inn at LaGuardia. If you have any questions concerning above please contact this office."

Q Whose signature appears on that?

A My signature. I do not know if that is my signature. It does not look like it, it is too nice.

MR. WOLF: I offer this as Exhibit B.



Greene - direct

28

MR. KOLLER: No objection.

THE CLERK: Defendant's Exhibit B in Evidence;  
so marked.

MR. WOLF: I have no further questions of this  
witness.

MR. KOLLER: Your Honor, I realize that this is  
a little bit out of the norm, but could I recall  
Mr. Greene later and proceed to the next witness?

MR. WOLF: No objection.

MR. STOKES: No objection.

THE COURT: Step down but stay with us please.

L I N D A   E N T R E S S ,                      having been first  
duly sworn, took the witness stand and testified as  
follows:

DIRECT EXAMINATION

BY MR. WOLF:

Q        Miss Entress, by whom are you employed?

A        Local 808.

THE COURT: I am sorry, I cannot hear you.

THE WITNESS: Local 808.

Q        In what capacity are you employed?

A        Secretary.

Q        How long have you been so employed?

A        Five years.

Entress - direct

29

1  
2 Q In the course of your work, did you become  
3 familiar with the case of Mr. Maddaloni against the Long  
4 Island Railroad Company?

5 A Yes.

6 Q Are you familiar with the proceedings that were  
7 held on his behalf in connection with his discipline and  
8 arbitration?

9 A Yes, from the phone calls and the letters sent  
10 out.

11 THE COURT: You did what?

12 THE WITNESS: When he called in to find out about  
13 his case, what was being done, I spoke to him and from  
14 letters from Mr. Greene that were sent out, I knew  
15 slightly.

16 Q I show you this letter marked Defendant's Exhibit  
17 A, dated May 17.

18 Are you familiar with that letter?

19 A Yes, I sent it out on the 17th.

20 Q Whose signature appears on that letter?

21 A Mine.

22 Q Did you sign Mr. Greene's name?

23 A Yes, I did because he was not in the office.

24 Q Did he dictate that letter to you?

25 A Over the phone.



Entress - direct

30

1  
2 Q He told you on the telephone to send that letter  
3 out?

4 A Yes, immediately.

5 Q You did so?

6 A Yes. I had a copy of that so it must have been  
7 sent out, it was in his file.

8 Q I show you Defendant's Exhibit B dated May 24,  
9 and ask you if you recognize this letter?

10 A I also sent that letter out, too, that is my  
11 signature also.

12 Q You say this is your signature?

13 A Yes, I wrote that.

14 Q How did you come to send this letter out?

15 A Mr. Greene called me up on the phone and told  
16 me they must send a letter out stating it was postponed until  
17 the 31st.

18 Q The date on this letter is May 24. Did you  
19 receive the call from Mr. Greene on that date?

20 A Yes.

21 Q You sent the letter out on May 24?

22 A Right.

23 MR. WOLF: I have no further questions, your  
24 Honor.

25 (continued.)

## CROSS EXAMINATION

BY MR. KOLLER:

Q Linda, I take it you are the girl in the office referred to by Mr. Greene in his testimony?

A Yes.

Q How many other girls are there in the office?

A One other.

Q How long has she been there?

A A year.

Q So then she was not there at the time that all this came to pass?

A No.

Q Were you alone at that time?

A No, I was not.

Q Who was there with you at that time?

A A previous girl, another girl.

THE COURT: I cannot hear you.

THE WITNESS: Another girl, she is not there any more.

Q Do you recall her name?

A Audrey Farrow.

Q Tell me a little bit about the office procedure.

For instance, when you send letters out, do you type them up?

A Right.



1  
2 Q From stenographic minutes?

3 A Yes, either that or if I get a phone call,  
4 Mr. Greene will give me the letter and I will write it out.  
5 I take shorthand, but not too good, but I take it.

6 Q Is that what happened in this particular case?

7 A Yes.

8 Q What kind of typewriter do you have?

9 A What kind of typewriter -- an Underwood.

10 Q Do you have an Underwood then?

11 A Yes.

12 Q When you put the paper in the typewriter, did  
13 you put in any tissue copies in?

14 A No, I did not.

15 Q Just the original?

16 A Just the original.

17 Q And then what happened then when you finish?

18 A I go to the copier machine and make a copy to  
19 keep in the files and send the original out.

20 Q What kind of copier do you have?

21 A And AB Dick.

22 Q You had one then?

23 A Yes.

24 Q How many of these public law board type hearings  
25 did you become involved in on the average say that year?

1  
2 A I do not know, maybe two.

3 Q Those were the only two at that particular  
4 time?

5 A That I can remember, I am not sure.

6 Q When you send notices out -- let me drop that  
7 line of questioning for a second. In this particular case  
8 you testified you signed both of these letters on behalf of  
9 Mr. Greene because he was absent, is that right?

10 A Right.

11 Q Do you have any way of marking the letter so  
12 the recipient knows that it is not Mr. Greene who signs but  
13 his secretary?

14 A No. I just signed his name and sent it out.  
15 If he is not in the office it has to go out.

16 Q Are you authorized to sign his name on other  
17 documents also?

18 A If he tells me to sign his name, I will sign it.  
19 If he is not going to get a chance to get in.

20 Q On Defendant's Exhibit A, to the best of your  
21 recollection, are those the exact words that were dictated  
22 to you?

23 A If it is on the paper that was dictated to me.  
24 This goes back to 1973, but if it is on the paper, if it is  
25 what I typed, that is probably what was dictated to me over



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the phone.

Q Did you bring your stenography book with you?

A No, I did not.

Q Do you have a specific recollection of having typed this letter on May 17, 1973?

A I typed it, I mean I typed it, if it was dated May 17, that is the date I typed it and sent it out.

Q It is your testimony that you typed this Defendant's Exhibit A or the original of Defendant's Exhibit A on May 17, 1973?

A Right. If there is a copy I typed it.

Q I beg your pardon.

A I typed it.

Q You typed it?

A Yes, I did.

(continued next page.)

1  
2 Q Now, turning to Defendant's Exhibit B, to the  
3 best of your recollection, are these the exact words of  
4 Mr. Greene at that time?

5 A To the best of my knowledge, they are.

6 Q And did you type this letter on May 24, 1973?

7 A Yes, I did.

8 Q And you also signed the letter on May 24?

9 A Yes, I signed it.

10 Q After typing and signing Defendant's Exhibit A,  
11 what did you do then?

12 A I put it in the mail, I guess.

13 Q You put it --

14 A I put it in an envelope, typed an envelope,  
15 and stuck it in the mail and put a file copy in the file.

16 Q But do you mail the mail out?

17 A I mail the mail out.

18 Q You put it in an envelope?

19 A I put it in the postage machine.

20 Q Postage machine?

21 A Right.

22 Q And then?

23 A I put it in the mail box at 5:00 o'clock.

24 Q And you did that with Defendant's Exhibit A?

25 A Yes.



1  
2 Q And you did that with Defendant's Exhibit B?

3 A Right.

4 Q Did you also at the time that you sent these  
5 notices out, send a notice out to Mr. Victor Lucente?

6 A The name sounds very familiar, but I do not know.  
7 I do not think it was the same date, I do not know, I am not  
8 too sure.

9 Q Was it about that time?

10 A It could have been, yes.

11 Q Did the letter you sent to Mr. Victor Lucente  
12 go first class?

13 A That I do not know. It could have went first  
14 class or registered return receipt.

15 THE COURT: I could not hear you.

16 THE WITNESS: It could have went registered  
17 return receipt.

18 Q What would determine whether it went first class  
19 or registered or certified?

20 A I would have a copy of the receipt.

21 Q That is not what I am asking. I am asking how  
22 would you know whether to send it first class or certified?

23 A I wouldn't know -- I would know -- I mean if  
24 Mr. Greene said be sure it is certified, I would certify it.  
25 If not, sometimes we are busy and they just go right out,

Entress - cross

37

1  
2 depends on the work load.

3 Q In other words, you have no sort of manual of  
4 operations for what you send out certified?

5 A No.

6 Q It would depend on whether Mr. Greene said to  
7 send it certified first class?

8 A If he said to me, well, it is important and to  
9 send it certified, I would send it certified and if not, I  
10 might just mail it out because it is very busy, it all depends.

11 Q You did send Defendant's Exhibit A certified?

12 A No, I did not, I would have a return receipt  
13 on it.

14 Q Would you have marked it on the letter if it  
15 was certified?

16 A No.

17 Q But nonetheless, Defendant's Exhibit A you  
18 recall, did not go certified?

19 A No. If that went certified, there would be  
20 a certified card on there, a green card and white card. If  
21 it went out certified, I would have a green card and a white  
22 card that he signed for it, and if it is not on there, it did  
23 not go certified.

24 Q It is your testimony then, that the Defendant's  
25 Exhibit B did not go out certified?



1  
2 A No, there is no return receipt on it.

3 Q Do you recall specifically sending these letters  
4 out either Defendant's Exhibit A or B?

5 A I remember sending the letters out because I  
6 remember the name Maddaloni. I remember sending it out because  
7 I spoke to him a few times on the telephone about the case  
8 and everything.

9 Q Did you call him up on this one?

10 A I didn't call him --

11 THE COURT: I cannot hear you.

12 THE WITNESS: I do not call him.

13 Q Didn't you testify you spoke with him on the  
14 telephone?

15 A Yes, he called the Union office.

16 Q He called you?

17 A Right.

18 Q You never called him?

19 A Not that I know of, no, I do not have his phone  
20 number.

21 Q Not in the file?

22 A No, I do not have it in my file.

23 Q Do you have a separate file for Mr. Greene?

24 A Excuse me?

25 Q Do you have a separate file from the file that

1  
2 Mr. Greene would have had for the prosecution of this case?

3 A No.

4 Q There is just one file?

5 A One file on the whole things.

6 Q And that has the members names and addresses  
7 and everything all in that file?

8 A Yes.

9 Q You do not have any other file?

10 A A file on what, what kind of file? On this  
11 particular case?

12 Q Yes.

13 A Just one file.

14 Q Did Mr. Greene dictate the address?

15 A No, I have that on file.

16 Q Let us turn to these specific letters. Do you  
17 specifically remember depositing these in the mail box?

18 A I have a lot of mail. There is so much mail,  
19 I can't say back to May, 1973, they must have gone out if I  
20 have copies, they have to go out.

21 Q When you sent a notice to Mr. Lucente, did you  
22 send a notice to him by certified mail?

23 A I believe so, yes.

24 Q Wasn't it sort of strange to send a notice to  
25 Mr. Lucente by certified mail and send it to Mr. Maddaloni



Entress - cross

40

1  
2 by first class mail?

3 A Not really, it depends, like I said, on the  
4 office. If it is busy I do as much as I can and get it out  
5 as fast as I can. Sometimes I don't send them out return  
6 receipts, it all depends.

7 MR. KOLLER: Registered she means, I assume.

8 THE COURT: What was the answer about Mr. Lucente?  
9 Was that certified or registered or not?

10 THE WITNESS: Yes, I believe it was.

11 THE COURT: At this same period of time.

12 THE WITNESS: Either before or after, that I  
13 am not sure of exactly when, but I believe it was sent  
14 certified.

15 Q Sometime several weeks ago I believe you were  
16 contacted or your office was contacted by someone from the  
17 Long Island Railroad to prepare documents, were they not?

18 A That I do not know.

19 Q Were you at any time asked to go to the file?

20 A File on what?

21 Q Regarding the Maddaloni case for the preparation  
22 of documents in this case?

23 A Not that I know of.

24 Q Did anyone ever ask you for an affidavit to the  
25 effect that you had sent these letters out?

1  
2 A No.

3 MR. KOLLER: No further questions.

4 MR. STOKES: That is the evidence on behalf of  
5 the railroad and the union, your Honor.

6 MR. KOLLER: Your Honor, I would like to recall  
7 Mr. Greene.

8 THE COURT: Yes, would you step up, Mr. Greene.

9 (Mr. Greene was recalled to the stand and testified  
10 further as follows:)

11 CROSS EXAMINATION

12 BY MR. KOLLER:

13 Q Mr. Greene, I believe it was your testimony you  
14 phoned your office from the hotel at the airport, the Holiday  
15 Inn at LaGuardia?

16 A I probably called from there.

17 Q And you asked your secretary to send out notices  
18 to both Mr. Lucente and Mr. Maddaloni?

19 A I would imagine so, both were scheduled.

20 Q Both were scheduled and this was on the 24th.  
21 Did you tell your secretary to send the letter to Mr. Lucente  
22 certified?

23 A I could not recall. The conversation was a  
24 year ago. I told her more than likely, I might have.

25 Q Did you ask your secretary to send notice of



Entress - cross

42

1  
2 the postponement of the hearing to Mr. Maddaloni via certified  
3 mail?

4 A Yes, first of all I usually say return receipt.

5 Q Return receipt?

6 Q Somehow I always say return receipt. I can't  
7 recall whether I said send it return receipt. A lot of times  
8 what I do I assume that she knows enough and she can generally  
9 take care of these.

10 Q I show you Exhibit A and ask you is that  
11 essentially the text of what you dictated to your secretary  
12 at that time?

13 A Yes, roughly that is what I said.

14 Q I show you Defendant's Exhibit B and ask you  
15 if that is the text of what you dictated to your secretary  
16 at that time?

17 A Yes.

18 Q Exhibit A, might I ask you just to read the  
19 first paragraph of your letter?

20 A "Your scheduled appeal for today Thursday, the  
21 24th, was postponed by the named arbitrator for reasons best  
22 known to him."

23 Q Didn't you testify that his airplane was  
delayed?

A Well, then, how do you reconcile that with the

1  
2 reasons best known to him?

3 A I do not understand the question.

4 Q The question is simply this. In this first  
5 paragraph of the letter you stated that it was the arbitrator's  
6 choice to postpone the hearing?

7 A That is right, his plane was grounded.

8 Q It was not his choice, his plane was grounded,  
9 is that right?

10 A That is right. You want me to put in the letter  
11 to notify that his plane was grounded?

12 Q Did you prior to the first scheduled hearing  
13 receive notice from Mr. Maddaloni that he wished to be present  
14 at the hearing at the public law board?

15 A Not to my knowledge that I can remember. I know  
16 there were some letters and telephone conversations but I  
17 cannot remember what the context of them were.

18 Q Do you recall receiving a second letter from  
19 Mr. Maddaloni regarding his desire to be present?

20 A I could not recall, I would have to look at  
21 the file.

22 MR. KOLLER: Your Honor, attached to our answering  
23 papers are two letters. May I look at them.

24 Q I show you this document attached to the  
25 answering affidavit of Mr. Maddaloni on this motion, and I



Greene - cross

ask you if you recall receiving that?

THE COURT: What is the date?

MR. KOLLER: The date on that letter is March 14, 1973, your Honor.

THE WITNESS: Yes.

Q You recall?

A I cannot recall, but I must have gotten it, it came to the office, I must have looked at it.

Q Would it be in your file?

A Gee, I wouldn't know, I have not got the file with me.

Q You do not have the file with you?

You knew you were going to testify today but you did not bring the file?

A I was going to testify yes, but I did not bring the file with me.

MR. WOLF: We have the file.

MR. KOLLER: The March 14, 1973, letter. I am not interested in a copy. I am asking Mr. Greene if he has a copy of this letter in his file.

THE COURT: Yes, I think what he wants to see is the file with the letter in it so Mr. Greene can have some assurance as he speaks.

Q Just to refresh your recollection, is this the

1  
2 file that you had with you?

3 A This is the file the girl keeps in the office.

4 Q Is this the file you had with you on May 24,  
5 1973, and May 31, 1973, when you went to represent Mr. Maddaloni?

6 A That was the file -- if that is the file, that  
7 is what I brought with me.

8 Q Is there another file?

9 A If that was in the file, that is what I brought  
10 with me.

11 THE COURT: You would have the file with you?

12 THE WITNESS: Yes.

13 MR. WOLF: Your Honor, may I say I have some  
14 documents in my file that relate to the matter, the  
15 proceedings, the records of the arbitrator and the  
16 prior record conducted on the property of the railroad.  
17 That was included in there which I now have in my  
18 file.

19 THE COURT: In other words, this is not the  
20 complete file?

21 MR. WOLF: This is not the complete union file,  
22 I have some documents in my own file.

23 THE COURT: That came from this file?

24 MR. WOLF: Yes, your Honor.

25 Q Was this letter in the file, this letter



1  
2 dated March 14, 1973?

3 A Yes.

4 MR. KOLLER: I offer it in evidence, your Honor.

5 MR. STOKES: No objection.

6 THE COURT: Now received in evidence as  
7 Plaintiff's Exhibit 1; so marked.

8 (continued next page.)  
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Greene - cross

47

1 THE COURT: Who is the John referred to in the  
2 text of the letter?  
3

4 MR. KOLLER: We will have Mr. Maddaloni testify.  
5 We can ask the witness if he knows.

6 Q Who is the John referred to in this letter?

7 A John Mahoney is the secretary treasurer and  
8 principal officer of Local 808.

9 Q Might I ask you to rummage through these  
10 documents in the file and see if there is a letter dated  
11 February 27, 1973, also for Mr. Maddaloni?

12 A Right.

13 MR. KOLLER: I offer it in evidence.

14 MR. STOKES: No objection.

15 THE CLERK: So marked Plaintiff's Exhibit 2  
16 in Evidence.

17 Q Had you discussed at any time prior to the  
18 appeal before the public law board the general status of the  
19 case with Mr. Maddaloni?

20 A I remember having some telephone conversations  
21 with him. I cannot remember -- obviously we must have  
22 talked about the case.

23 Q Approximately when were those telephone conver-  
24 sations?

25 A I know I talked to him, I couldn't remember when.



1 Q You called him?

2 A I remember he talked to me in the office. I  
3 remember calling the number on the correspondence. I do not  
4 know where I got in contact with him, I know I did talk to  
5 him with reference to this over the phone. When I can't  
6 remember, it was quite some time ago.

7 THE COURT: And in your office or just on the  
8 telephone?

9 THE WITNESS: I remember talking to him in the  
10 office. I remember the number being left because he  
11 had spoken to the girl and he wanted to talk to me and  
12 she said, "Did you call Maddaloni," and I said I would.  
13 I do not remember.

14 At that particular time we had a 51 day strike  
15 in the interim period and we had 90 days of a board  
16 trying to settle a labor dispute there and I couldn't  
17 remember what transpired. It was five months gone  
18 right there.

19 Q Did you have the impression prior to the public  
20 law board that this matter was quite serious as far as  
21 Mr. Maddaloni?

22 A Of course, this charge is serious.

23 Q At the time of the hearing on the 31st, did you  
24 protest at all that the hearing be conducted without your  
25

1 witness, without Mr. Maddaloni?

2 A No, I thought he had been given an opportunity  
3 to show us and he chose not to show up so I proceeded.

4 Q You made no objection to the record?

5 A Not to my knowledge. What we might have done  
6 is we might have waited around a little bit to give him a  
7 chance to show up.

8 Q Did you wait around?

9 A Yes, we did.

10 Q Did you call him up?

11 A No, I didn't.

12 Q Did you think maybe, based on these two docu-  
13 ments, these two letters where he begged to be present, did  
14 you think it was not worth a telephone call?

15 A I felt if he could not make it he would contact  
16 our office.

17 Q Where did you go to school, Mr. Greene?

18 A Let me see, it is a long time ago -- high  
19 school?

20 Q High school?

21 A I went to James Monroe High School in the Bronx.

22 Q Did you graduate?

23 A No, but I have a high school equivalency  
24 diploma.  
25



1  
2 Q After that, did you have any other specific  
3 training, did you go to any schools?

4 A I think I went to training manager's institute  
5 for about six months.

6 Q How long have you been working for the union  
7 prior to the May 31 hearing?

8 A About 6 years.

9 Q What was your primary job for the union?

10 A Organizing, representing the people that we had  
11 under contract.

12 Q How many people did you represent in the course  
13 of a year?

14 A I would say we have roughly about 2,000 members  
15 in our organization.

16 Q I asked you how many did you represent,  
17 represent grievance type hearings?

18 A On the Long Island Railroad?

19 Q No, all together.

20 A All together I could break it down because I  
21 do not handle the other shops, I handle the Long Island  
22 Railroad and at the last count we were running over 200  
23 trials and investigations a year for the track department,  
24 the B&B department, the marine department and, I think that  
25 was about it.

Greene - cross

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Q Separating the trials from the investigations,  
how many trials do you handle?

A That I handle?

Q Yes.

A I will tell you the truth --

Q How many a week, how many did you handle last  
week?

A It varies.

MR. STOKES: I object at this time.

THE WITNESS: Last week I had --

MR. STOKES: I want to object to this whole  
line of questioning. It is completely irrelevant to  
the issue before us.

THE COURT: He may inquire. Do not interrupt  
the witness before he has had a chance to answer.

THE WITNESS: Last week I had a discharge  
reinstated on appeal. I had three gamblings on the  
premises. That never got to trial, there was supposed  
to be a trial but we settled for a letter.

Q Mr. Greene, I am asking how many grievance  
hearings, adversary type hearings, do you have in the course  
of an average week or month?

A Sometimes none and then sometimes you have six.  
I had eight at a clip already on one day.



1  
2 Q Did you ever have any specific training for  
3 the presentation of these hearings?

4 A No -- what kind of training do you mean?

5 Q Did you ever go to a class or seminar run by  
6 the International Brotherhood of Teamsters?

7 A Yes, I went to labor school for two or three  
8 weeks in Miami.

9 Q When was that?

10 A About three years ago.

11 Q When was that?

12 A I think it would be about three years ago.

13 Q That would be approximately in 1971?

14 A Yes, something like that, two or three years  
15 ago, I cannot remember the exact date.

16 Q Prior to May 31, 1973?

17 A Prior to that, yes.

18 Q Did they have formal lectures there?

19 A They had a series of lectures. It was everyday  
20 for 14 days, four hours in the morning and four hours in the  
21 afternoon and they covered a multitude of whatever you might,  
22 whatever had to do with labor problems or organization  
23 representation.

24 Q Did they specifically cover grievances and  
25 proceedings?

1 A Yes. I really couldn't recall.

2 Q Would you tell the Court how are you qualified  
3 to handle grievance proceedings?  
4

5 A By the fact I represent my people. They elected  
6 me and I represent them and obviously that must be satisfactory  
7 because they keep re-electing me.

8 Q Do you still represent the railroad policemen?

9 A No, I do not.

10 Q When did that cease?

11 A I guess it must have been six or seven months  
12 ago, maybe six or five months ago, something like that.

13 Q That was about when in terms of months or what  
14 month approximately?

15 A Gee, I really couldn't say, I would have to  
16 look it up.

17 MR. KOLLER: No further questions.

18 MR. STOKES: We have nothing more, your Honor.

19 MR. KOLLER: Your Honor, I would like to put  
20 Steven Maddaloni on the stand.

21 THE COURT: Does the Union have any other  
22 evidence?

23 MR. WOLF: No, that is all, your Honor.

24 S T E V E N M A D D A L O N I, having been first  
25 duly sworn, took the stand and testified as follows:



Maddaloni - direct

54

1  
2 DIRECT EXAMINATION

3 BY MR. KOLLER:

4 Q Mr. Maddaloni, are you the plaintiff in this  
5 case?

6 A Yes.

7 Q Sometime back in 1972, was a grievance proceeding  
8 held against you by the Long Island Railroad?

9 A Yes.

10 Q Was a trial against you held by the Long Island  
11 Railroad?

12 A Yes.

13 Q What was the result of that trial?

14 A I was ordered dismissed from the service.

15 Q Did you appeal that?

16 A There was an appeal put in by Local 808 of the  
17 Teamsters.

18 Q Did you ask them to put the appeal in?

19 A Yes.

20 Q Did you approach them at that point about out-  
21 side counsel?

22 A Not at that particular point, no.

23 Q Did you ever approach them about outside  
24 counsel?

25 A Yes, I did. This was I believe back in the

Maddaloni - direct

55

1 beginning of 1972, when I had prior trials.

2 THE COURT: Beginning when?

3 THE WITNESS: 1972, I had prior trials, I believe  
4 in March of 1972, and I requested from Mr. Greene if  
5 I had the right to outside counsel and he said no,  
6 you don't, that if you try to bring into any trials  
7 or appeals, he will be barred.  
8

9 Q But turning now to this action, what was the  
10 result of the appeal on the company trial?

11 A The decision of the dismissal was upheld.

12 Q By whom?

13 A By Mr. Rosen.

14 Q Did you then request the Union to take the  
15 matter on further appeal if possible?

16 A Well, I believe I misunderstood your first  
17 question. I see what you are getting at now.

18 Q Try to answer the questions as they are asked.

19 A The first appeal went through Mr. Ward and he  
20 upheld the dismissal and Mr. Schlager subsequently upheld it  
21 and at that time the Union then took it to a public law  
22 board.

23 Q That public law board is being protested right  
24 now?

25 A That is right.



1  
2 Q Did you at any time prior to the hearing by  
3 the plaintiff contact Mr. Greene with regard to this case?

4 A Yes, on numerous occasions.

5 Q Do you recall any specific occasions?

6 A I couldn't give you any specific dates offhand  
7 but I know I wrote at least two letters to Mr. Greene  
8 personally and at least one to Mr. Mahoney personally and I  
9 talked to both Mr. Greene and Mr. Mahoney at least a minimum  
10 of five times over the phone.

11 Q I show you Exhibit 2 and ask you did you write  
12 that letter?

13 A Yes, I did.

14 Q Did you ever receive an acknowledgement of  
15 that letter?

16 THE COURT: Which one is that?

17 Q This is the letter dated February 27, 1973.

18 MR. KOLLER: That is Exhibit 2, it is in  
19 inverted order.

20 THE WITNESS: I never received any acknowledgement  
21 from this at all.

22 Q I show you Plaintiff's Exhibit 1 and ask you  
23 if you sent that letter to Mr. Greene?

24 A Yes, I did.

25 Q Did you receive an acknowledgement from that

1 letter, that is the letter of March 14, 1973?

2 A Not from Mr. Greene, no.

3 Q From anyone in the Union?

4 A I received a one sentence handwritten letter  
5 from Mr. Mahoney stating, "We are doing everything we can."

6 Q Do you have a copy of that letter?

7 A Not with me, no.

8 Q Do you know Mr. Victor Lucente?

9 A Yes, I did.

10 Q Did he have a hearing before the public law  
11 board at the same time you did?

12 A Yes, he did.

13 Q Was it the same day if you know?

14 A I believe it was, yes.

15 Q Do you know if Mr. Lucente received notice  
16 prior to the hearing?

17 A Yes, he did.

18 Q Did he receive it by mail?

19 A Yes.

20 Q Do you know if the mail was certified?

21 A Yes, it was.

22 Q Did you ever receive a letter from Mr. Greene  
23 telling you about the date of the public law board hearing  
24 on May 24, 1973?  
25



Maddaloni - direct

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1  
2 A No, never.

3 Q Did you receive any notice about a postponement?

4 A No.

5 Q Did you receive any notice about a public law  
6 board hearing on May 31, 1973?

7 A No, I never did.

8 Q I show you Defendant's Exhibit A which is a  
9 letter dated May 17, 1973, purportedly from M. Greene of  
10 Local 808 to you, and I ask you did you ever see that letter?

11 (continued next page.)  
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Maddaloni - direct

59

1  
2 A Never.

3 Q I show you Defendant's Exhibit B which purports  
4 to be a letter from M. Greene to you and ask you if you have  
5 ever seen that letter?

6 A Never.

7 Q Did you ever receive a telephone call from the  
8 local, from anyone in the local?

9 A No, never.

10 Q Regarding the hearings?

11 A Never.

12 Q Did they ever call to inquire about factual  
13 background?

14 A No, they never did.

15 Q Did you ever call them?

16 A Yes, on numerous occasions.

17 Q When you called them what did you say in general  
18 terms?

19 A Well, when I could get ahold of Mr. Greene, which  
20 I believe was on one occasion only, I requested pretty much  
21 what I did in that first letter in February, 1973, to keep  
22 me advised of the proceedings and how things were going and  
23 give me a copy of any and all briefs and if we could possibly  
24 sit down and make an appointment so I can sit down with him  
25 and Mr. Wolf to set up a proper defense for the arbitration.



Maddaloni - direct

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1  
2 Q Did you ever give the Union your telephone  
3 number?

4 A Yes.

5 Q When?

6 A Well, when I first became the representative  
7 they needed the address and phone number and what have you if  
8 for no other reason than they had it for health and welfare  
9 fund.

10 Q The Union had your telephone number?

11 A Yes, definitely-

12 Q Were you home on the 24th of May, 1973?

13 A To the best of my recollection, yes.

14 Q Do you have any reason to believe you were home?

15 A Well, at that time my wife was approximately  
16 eight or nine months pregnant and I would not be traveling  
17 while she was that far into her pregnancy, I would be staying  
18 home.

19 Q On the 31st of March, 1973, were you home on  
20 that day?

21 A To the best of my recollection, yes.

22 Q For the same reason?

23 A Yes, definitely.

24 MR. KOLLER: No further questions.

25 (continued.)

1  
2 CROSS EXAMINATION

3 BY MR. STOKES:

4 Q Mr. Maddaloni, in May, 1972, where did you  
5 reside?6 A In May, 1972, I believe I was living on Lincoln  
7 Avenue in St. James.

8 Q And in November of 1972, where did you reside?

9 A In Coram.

10 Q What address in Coram?

11 THE COURT: That is November, 1972.

12 Q November, 1972.

13 A There were two addresses at that particular  
14 residence because it was changed by the post master. The  
15 original address was 50 Gibbs Road, Apartment J5 and  
16 subsequently was changed by the post office to 5 Juniper Court,  
17 Coram.18 Q And you were residing with your wife at that  
19 time?

20 A Yes, definitely.

21 Q So that the address 50 Gibbs Road, Apartment  
22 J5 is the same as 5 Juniper Court?

23 A Yes, it is.

24 Q Did I understand you to say that you just  
25 received a one line note in regard to the arbitration  
decision from the Union?



Maddaloni - cross

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25

A No, sir, that was not what I said at all.

Q What was your testimony?

A I believe when Mr. Koller asked me at the time, did I get any answer to the two exhibits that we had here and I said just a one line letter from Mr. Mahoney.

As for an arbitration decision, I received a full copy.

Q What was the one line letter you received from Mr. Mahoney?

A As I said, I had written those two letters to Mr. Greene and I wrote the letter to Mr. Mahoney enclosing copies of the letters to Mr. Greene and he sent back a letter stating, "We are doing everything we can."

No date, no signature, nothing.

Q You did indicate in your direct testimony that you had requested that an appeal be filed in your behalf? Is that right?

A Yes, sir.

Q And you knew that the Union had filed such appeal?

A Prior to the appeal being held?

Q Yes.

A Prior to the appeal being held, all I got was promises and I had no idea as to what was going on.

Maddaloni - cross

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1  
2 Q You had no idea that the Union had actually filed  
3 an appeal?

4 A I never received any notice of it and I got  
5 one promise of it over the phone, as I said, I never got any-  
6 thing in the mail in answer to all those letters.

7 Q I show you a letter, Mr. Maddaloni, dated  
8 April 17, 1973, and ask you whether that is your signature  
9 and whether you sent that letter?

10 A Yes, sir.

11 Q Would you read the P.S. to the letter?

12 A "Please give me a progress report as to how  
13 Marty is coming along with the neutral. How does it appear  
14 the outcome will be? Approximately how long do you think it  
15 will take before we get a decision?"

16 MR. STOKES: I ask this letter be marked  
17 Defendant's Exhibit C.

18 THE CLERK: Is there any objection?

19 Marked Defendant's Exhibit C in Evidence, so  
20 marked.

21 MR. KOLLER: I have no objection.

22 MR. STOKES: I have nothing further, your  
23 Honor.

24 MR. KOLLER: I have no further questions, your  
25 Honor.



Maddaloni - cross

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MR. KOLLER: I would like to call to the stand

Mr. Dominick Di Mola.

DOMINICK DI MOLA, having been first  
duly sworn, took the witness stand and testified as  
follows:

## DIRECT EXAMINATION

BY MR. KOLLER:

Q Dominick, what do you do for a living?

A A patrolman for the Long Island Railroad.

Q How long have you been a patrolman?

A Almost seven years on the Long Island Railroad.

Q Do you have any additional functions?

A I was the local representative for Local 808.

Q Are you now?

A No, I am not, no.

Q Have you been at one time?

A Yes, I was.

Q For what period?

A When we entered into Local 808 from the UTU  
where I was second vice chairman and when we got to Local 808  
I transferred the title from second vice chairman to local  
representative.

Q Are you a local representative of Local 808?

A Yes, representing the members of the police  
department.

Maddaloni - cross

65

Q Did Local 808 consist of other unions, too, or other departments?

A Yes, they did on the railroad, each craft had a local representative or shop steward.

Q You were the representative from the police department?

A I was one of the representatives.

Q How many representatives were there from the police department?

A Jean Mahl at the time, myself and Thomas Lenny. At that time we had elections and I became president of the PBA.

Q We are talking about Local 808, not the PBA. Are you familiar with the procedures followed by Local 808?

A Yes, I am.

Q In handling grievances?

A To a point, yes.

Q Did Local 808 have any sort of procedure regarding giving notice; yes or no?

A Referring to trials, no, the railroad did that, referring to initial trials, you know. As far as correspondence like registered mail for me telling me I was not going to handle grievances or what or wanted to get an attorney, they



Di Mola - direct

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1 sent out registered mail for Union dues and they sent out  
2 registered mail for initiation fees.

3 Q Would they in the course, if you know, notify  
4 a grievant of an appeal by registered mail?

5 A I believe they would but I cannot testify to  
6 that.

7 Q At what time did Local 808 cease to represent  
8 the railroad policemen on the Long Island Railroad?

9 A The final date would have been January 31, 1974.

10 Q That was then after the grievance appeal which  
11 occurred on May 31?

12 A Right.

13 Q Do you know why Local 808 ceased to represent  
14 the railroad policemen?

15 A My personal opinion on it?

16 Q Do you know?

17 A I believe --

18 MR. WOLF: I am going to object to this line  
19 of questioning, it is not relevant to this inquiry.

20 THE COURT: He may answer.

21 A I believe that the patrolmen, being police  
22 officers were dissatisfied with the representation that we  
23 were getting by Local 808.

24 I know for a fact that Patrolman Jake Maas has  
25

1  
2 a trial and requested to bring his own attorney and his own  
3 attorney appeared and Local 808 and the management of the  
4 police department refused to let his attorney in but it was  
5 not on the transcript.

6 Q Please try to stick to the answers to the  
7 questions I ask.

8 Was a vote ever taken by the Union members?

9 A A vote was taken to pull out of the Teamsters  
10 Union unanimously.

11 Q Who took over the representation?

12 A Sergeant Mike McTay.

13 Q Into what organization?

14 A We formed our Policeman's Benevolent Association  
15 and we got out our own bargaining charter.

16 MR. KOLLER: I have no further questions.

17 MR. WOLF: No questions.

18 MR. STOKES: I have no questions.

19 THE COURT: You may step down.

20 MR. KOLLER: We have no further witnesses, your  
21 Honor.

22 THE COURT: Is there anything further?

23 MR. STOKES: Nothing further, your Honor.

24 MR. KOLLER: Nothing further, your Honor.

25 THE COURT: Is there anything either side wishes



Di Mola - direct

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1  
2 to say at this time?

3 MR. KOLLER: Your Honor, is that in the way of  
4 summation? I do not think you are quite asking for  
5 that?

6 THE COURT: Of course. You have a one man jury  
7 here.

8 MR. KOLLER: Your Honor, the basic contention  
9 of plaintiff here is that due process has not been  
10 met. We have concentrated our efforts in the area of  
11 whether or not notice has been given and whether or  
12 not plaintiff in this case had been apprised of the  
13 hearings which he had asked to attend.

14 Plaintiff testified he had no knowledge of  
15 the hearings. There is no direct testimony that the  
16 letters went out, other than that they were typed up  
17 and they probably in due course did go out. There is  
18 no specific memory as to them having gone out and I  
19 maintain that there is no specific proof that notice  
20 did go out.

21 (continued next page.)  
22  
23  
24  
25

## Koller - summation

There was ample opportunity in this particular case to get on the phone and advise the plaintiff. The plaintiff having expressed this keen desire to be present was not even made known to the tribunal, the public law board, which consisted of one referee and no exception was taken to the fact that the plaintiff was not there.

The representative of the Union shrugs the whole thing off and says he was not there and he figured he did not at all care about it and I maintain that then based on this, due process has been really violated.

I also maintain if one looks at the background not just of what we have been talking about here, we have only been dealing with a narrow issue whether a plaintiff received notice, but if one looks at the entire background of this case, one sees more or less a pattern of an intention on the part of a large organization to bring to its knees one small individual employee in the organization and by whatever means possible and it appears to this attorney that collectively when one reads the prior transcript which, notwithstanding errors and omissions, when one reads the method of making notice or giving notice to the party of the hearing, when one looks to the quality of



1  
2 the representation that was afforded to the plaintiff  
3 by Local 808, one can only come to the conclusion, by  
4 golly, no, there was no due process here.

5 Due process as required by the law is lacking.

6 THE COURT: Mr. Stokes.

7 MR. STOKES: May it please your Honor, as  
8 Mr. Ward indicated, the railroad gives notice initially  
9 of the charges against a man and schedule of a trial.  
10 The man appears and normally he is represented by his  
11 Union and as in indicated by the moving papers in this  
12 matter, Mr. Maddalone was represented by Mr. Mahl  
13 and he took no exception at the trial to such repre-  
14 sentation.

15 Subsequent to this any other notices are given  
16 to the man's representative, the Union that appeared  
17 on his behalf and the Union gets notice from the  
18 railroad. The Union in this instance, so when it  
19 reached to an appeal stage to the arbitrator, which was  
20 testified by Mr. Greene and his secretary, Mr. Greene  
21 notified the secretary to send out a notice and she  
22 did.

23 Now, as in all lawyer-client relationships when  
24 a lawyer or any representative sends a notice, usually  
25 it is sent by first class mail and I think the Court  
can take judicial notice of that.

Sometimes notices are sent by registered mail or certified mail but the normal thing is when you send it out you will send it by first class United States mail and you assume the post office will get it there.

In this instance Mr. Maddaloni said he never received the letters. That may readily be.

We find that apparently somewhere along the line the post office changed the address of this residence and it could readily be the local postman did not know what it was all about and it got lost somewhere. How it got lost and what the problems of the post office are, I do not know.

It would appear that the sending of the notice by first class United States mail is all that is required and the evidence in this instance indicates that the notice was sent.

On May 24 Mr. Green expected Mr. Maddaloni and Mr. Lucente to show up. He sent the notice out in good faith and assumed it went out and was received. He had no idea that Mr. Maddaloni had not received it. In any event, the exhibits annexed to the moving papers also show that Mr. Maddaloni, as late as September of 1973, was indicating complete satisfaction with the Union representation because at that time he was under a misapprehension that the arbitrator was



1  
2 rendering a decision in his favor.

3 It is only after he finds out that the arbitrator  
4 rendered a decision against him that suddenly we get  
5 cries of lack of due process and sour grapes.

6 Up to that time Mr. Maddaloni had been quite  
7 satisfied with the Union representation, had not taken  
8 exception to them, as I say as late as September, 1973,  
9 and expressed his satisfaction with the Union  
10 representation.

11 I submit that, your Honor, due process was  
12 afforded here. The notice was sent out. If it was  
13 lost it was the fault of the post office without any  
14 knowledge or conniving of any of the defendants here.  
15 That sending the notice out by first class United States  
16 mail is all that is required.

17 MR. KOLLER: Your Honor, just by way of rebuttal,  
18 I would ask the Court that they interpret the letter  
19 from Mr. Maddaloni which he sent --

20 THE COURT: The September letter?

21 MR. KOLLER: Yes, interpret that letter in the  
22 light in which it was written, not in the light of  
23 which it has been construed by the railroad.

24 THE COURT: Well, I do not quite understand  
25 what you mean by that?

1           Your Honor, in that letter Mr. Maddaloni  
2 received notice or received via the grapevine word that  
3 a decision had been rendered favorable to him and, of  
4 course, he was happy with it. But the opening paragraph  
5 starts out: "Although I did not receive notice," which  
6 is tantamount to saying listen, fine, due process has  
7 been violated, you know, but I am happy with the result  
8 that came out. But you know, really, if we were doing  
9 it over again, I would want to be present, I really did  
10 want to be present.

11           He is not saying, I waive all my rights or  
12 anything else like that in the letter. He is just  
13 merely saying that fine, you did not do it according to  
14 the way I asked you do it, my rights have been violated,  
15 but perhaps the end result is not all that bad either.

16           And that is the general interpretation that I  
17 ask the Court to place on that letter, not that I am  
18 satisfied with what you did and I waive everything.

19           THE COURT: The evidence indicates the proceedings  
20 were substantially as set forth in the affidavits and  
21 there is really not any controversy about anything  
22 involved in this case until after the initiation of  
23 the appeal to the public law board.

24           There is no suggestion that it was not every-  
25 body's idea, the Union, railroad and Mr. Maddaloni, to



1 have his case presented to the special law board in  
2 accordance with Exhibit G.

3 And there appears to be no question that the  
4 selection of Mr. Rosen as the neutral was something which  
5 the parties contemplated and wished. That much  
6 certainly would appear to flow plainly from the post-  
7 script to Mr. Maddaloni's letter to Mr. John Mahoney  
8 of April 17, 1973.

9 In February there was no question and I believe  
10 the record shows that the Union did receive a letter  
11 of February 27, 1973, and there appears to be no  
12 question that it likewise received a letter on March  
13 14, 1973, and that both of these with a note of  
14 urgency requesting the Union to keep plaintiff fully  
15 and closely advised of everything that went on.

16 It further appears that whatever have been the  
17 full facts and perhaps not all of them have been  
18 brought out, the Local did not punctiliously comply  
19 with the requests of the letter of February 27, 1973.

20 There is no indication that it sent a copy of  
21 the brief to Mr. Maddaloni, although the record shows  
22 that a record shows that a respectable and thoughtful  
23 brief was submitted to the public law board on  
24 Mr. Maddaloni's behalf and one that the Union could  
25 quite unashamedly have sent to him.

1           It is noteworthy that in the letter of February  
2 27, 1973, there the plaintiff did not express a wish  
3 to testify at the hearing of the appeal but it is clear  
4 that he did wish to be present at it.

5           There is no indication that he was consulted  
6 about the conduct of the appellate proceeding.  
7 Presumably there seems to be an easy inference that  
8 the Union thought it knew a good deal more about those  
9 things than he did perhaps and meant to do that itself.

10          We come down then to the question of whether  
11 or not the notification letters of May 17 and May 24,  
12 1973, were sent and received. In every case in which  
13 the mailing of a letter is challenged, it is impossible  
14 for an honest witness honestly to say that I have  
15 a distinct recollection of having taken this letter  
16 stamped it, licked the stamp, put it in the postal  
17 machine, observe the correct postage being impressed  
18 upon it and distinctly recall definitely that I  
19 placed it in a post office box regularly maintained  
20 by the United States Post Office Department.

21          Where people expect that the mailing of a letter  
22 may be challenged affidavits of mailing are made  
23 immediately. But, someone who does make a point of  
24 observing these matters so he could make such an  
25 affidavit.



1 Another way is to request return receipts on  
2 certified or registered mail and that was not done here  
3 as far as it appears.

4 There is no question that each of these letters  
5 was addressed to a correct address from Mr. Maddaloni.  
6 They were both addressed to 5 Juniper Court, Coram,  
7 New York and his own zip code, 11727 and I suppose  
8 that is the correct zip code.

9 So the real question is whether the letters  
10 were dispatched and received.

11 Well, it appears that a letter was sent to  
12 Mr. Lucente about the same time and received by him  
13 but we cannot be sure it was sent out on the same  
14 date.

15 It also appears that at that time the Union  
16 was beset with many problems because of trouble with  
17 the railroad and therefore it is possible that  
18 Mr. Maddaloni was not given the personal attention,  
19 the handholding which he naturally expected at this  
20 time.

21 However, I find it difficult to believe he  
22 had not received one or both of these letters of  
23 May 17, 1973, and May 24, 1973. It would be under-  
24 standable if one had failed of delivery. It becomes  
25 remarkable if neither one was received and taxes

1 credibility at this point.

2 I find myself unable to accept the testimony  
3 that neither letter was received.

4 We turn then to the question of whether on the  
5 rest of the record which makes it perfectly clear as  
6 Mr. Koller has brought out, that the railroad made no  
7 effort to see that the appellant policeman received  
8 notice and the answer to that is that the railroad  
9 made no effort at all to do that.

10 (continued next page.)  
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1 Since the railroad was the respondent, perhaps  
2 that does not mean much in such cases as this. The  
3 Union was the one who would normally be giving the  
4 notices and that the public law board which presumably  
5 would have set the dates for the hearing originally  
6 or I suppose it would have had to be set to suit its  
7 convenience as we can judge.

8 In any event, in the light of what occurred at  
9 the trial on the railroad property, a transcript of  
10 which is in the record, it would be rather difficult  
11 to say that the plaintiff would have been advantaged  
12 by his presence.

13 The case was certainly better handled if it  
14 could be argued coolly and abstractly for the record as  
15 a most unimpressive record from the point of view of  
16 Mr. Maddaloni and was a record which candor would  
17 compel one to say presented enormously difficult  
18 problems in obtaining a reversal.

19 It is a record which could have been repeated  
20 at the appeals level. It is difficult to say what  
21 could have been added to this record by Mr. Maddaloni's  
22 presence that could have mitigated the record or  
23 promoted his appeal.

24 So that there is here, and I mention this only  
25 for the circumstantial bearing on the question of

1 whether proper notice was given of the appeal, that  
2 discretion might have suggested absence where presence  
3 could have embarrassed rather than helped the appeal.

4 That does not explain the failure of the Union  
5 or Mr. Greene or Mr. Mahoney to discuss strategy with  
6 the defendant and say to him frankly, you would be  
7 wise to stay away from the hearing and let us argue  
8 this on the cold record because if you were there you  
9 may be questioned and you may produce the same poor  
10 impression that you manifestly produced during the  
11 trial on the property.

12 But there is no suggestion that there was any  
13 such discussion of the case with the defendant.

14 Where does that leave the local in that he was  
15 the defendant in the discharge case between him and  
16 the road? I quite think the question there is, what  
17 is, if any, the legal consequences of that default  
18 on the part of the local. Where does it leave this  
19 total record for that is the only finding of fact  
20 that I can clearly make anything in favor of the  
21 plaintiff, that there was a failure to consult with  
22 him on strategy.

23 I think it is necessary to turn to the letter  
24 of September 17, 1973, and the letter itself is in  
25 evidence. It is annexed to the affidavits and I think



1 we have treated this as in evidence.

2 I think it is well to, since it both contains  
3 a self-serving, if you want to call it that, declaration  
4 on Mr. Maddaloni's part, and has been referred to by  
5 Mr. Stokes as something which indicates that up to  
6 that point, sometime before the announcement of the  
7 decision of the public law board, that the plaintiff  
8 was not dissatisfied with the proceedings.

9 I think on that one I would have to accept  
10 Mr. Koller's argument that if you think everything is  
11 looking good and when you learn you lost, you naturally  
12 look back and re-examine the record in the light of  
13 the loss.

14 If Mr. Maddaloni genuinely had heard on the  
15 grape vine, and I do not know there was a grape vine  
16 around from Baltimore to Jamaica or Coram, that he was  
17 going to win, the letter is completely explainable  
18 even though at the moment he was of the mind that he  
19 had not been properly advised.

20 What I do not find likely is that he could in  
21 total candor have said on September 17, 1973, that he  
22 had no prior knowledge that an appeal would be or was  
23 held. If we accept what he has said about the non-  
24 receipt of the two mail letters and I do not think  
25 we can, I find it difficult to believe that he never

1 even knew that an appeal was to be held.

2 We can see that from the February 27, 1973, letter  
3 and the letter of April 17, 1973, postscripts, both  
4 of which indicate that he knew an appeal was pending  
5 and of course, the March 14, 1973, letter, Exhibit 1,  
6 exhibits that he did know that an appeal had been  
7 lodged.

8 So that statement in the letter of September  
9 17 does not ring true unless it is given a special  
10 reading that he did not know what day the appeal would  
11 be heard and that is, I think, the interpretation on  
12 it that could be imposed.

13 So I do not know that there is anything to be  
14 made either way out of Exhibit A annexed to the motion  
15 papers, defendant's letter of September 17, 1973. It  
16 is sixth of one and a half dozen of the other, and I  
17 think the one thing that it does indicate is that the  
18 local was not keeping in close touch with him.

19 Now, that is about all that can be said on the  
20 facts.

21 The question then is whether on these facts one  
22 can say that there was a denial of due process to him,  
23 whether here the case is such that when one can go  
24 back of the arbitration, well, the disciplinary pro-  
25 ceedings, the appellate procedure and the public board



1 decision on the ground that there had been a failure  
2 on the part of the Union to comply with the consultation  
3 requests so strongly made in the letter of February  
4 27, 1973.

5 I find he was given notice of the hearing but  
6 that he was not adequately consulted in the terms of  
7 his letter of February 27, 1973. Does anybody have  
8 any ideas on that?

9 Now as I visualize the case, and you see this  
10 is the case against the Long Island Railroad,  
11 Mr. Schlager as well as against Local 808 and  
12 Mr. Greene and Mr. Mahoney and that on the facts as  
13 I find them, the issue is not the same because I think  
14 on the facts as I have found them, the railroad and  
15 Mr. Schlager are in the clear and here if there is  
16 anything, there is a breach from duty between the  
17 plaintiff and the local, the plaintiff, Mr. Maddaloni  
18 and the local and its officers.

19 Mr. Koller, I think I must grant the railroad  
20 summary judgment but I am completely up in the air  
21 as to where we stand on the case between Mr. Maddaloni  
22 and Local 808.

23 MR. KOLLER: Your Honor, it is our contention  
24 that the railroad worked hand in glove with the Union.

25 THE COURT: There is no evidence that, there

1 is not a wisp of evidence of that or any suggestion  
2 where such evidence might exist or could be found or  
3 whence it could be produced.

4 MR. KOLLER: Well, your Honor, it is our con-  
5 tention that, and we argued this case primarily from  
6 whether or not due process had been afforded the  
7 plaintiff in his public law board hearing.

8 THE COURT: Well, I think it is a little bit  
9 broader than that, whether the man was done in anyway.

10 MR. KOLLER: And, your Honor, while we on the  
11 one hand feel that perhaps procedurally the Long Island  
12 Railroad complied with the strict letter of the law --

13 THE COURT: No, they went beyond it, there is  
14 nothing wrong there.

15 MR. KOLLER: I think these are basically facts  
16 we would like to bring out in a trial.

17 THE COURT: No, that is what the statute says  
18 shall not happen and what it means shall not happen.

19 MR. KOLLER: And as a minimum we would ask that  
20 this Court then direct a new public law board hearing,  
21 in other words, rather than Mr. Maddaloni seeking his  
22 remedy solely against the Union, we would ask that a  
23 new public law board be ordered by the Court. The  
24 railroad may even stipulate to that, I do not know.  
25 Our contention basically seems to be this; at the time



1 of the public law board hearings much evidence was  
2 brought in to the record of prior disciplinary action  
3 against Mr. Maddaloni. These prior disciplinary actions,  
4 each one in and of themselves, had basically elements  
5 of lack of due process.

6 There is a serious question as to the integrity  
7 of the transcripts that were made at the time of the  
8 earlier trials.

9 What we are really protesting here is that the  
10 law board was allowed to consider all these things in  
11 the absence of Mr. Maddaloni being there and in fact,  
12 they say it in their testimony which you have a copy  
13 of. They say, well, he is not really here but we would  
14 like to say that we have gone over his whole employment  
15 record and we have also gone over the transcript, but  
16 that whole employment record.

17 Our point is that it was in a way just a bit  
18 misleading. One, because there were holes in the  
19 transcript.

20 THE COURT: You mean the transcript, the  
21 memorandum respecting which I think was presented as  
22 an exhibit at the hearing on the motion for summary  
23 judgment.

24 MR. KOLLER: Yes. Essentially what they had  
25 was a summary sheet which said on such and such a date

1 he did this or on such and such a day --

2 THE COURT: No, that is a different thing.

3 MR. KOLLER: I realize that, but the transcript  
4 indicates each one of those items was based on what  
5 we contend was a rather haphazard procedure at best  
6 and had Mr. Maddaloni had counsel then at the time or  
7 had he had better representation by the Union, we  
8 maintain that these facts would have been drawn to  
9 the attention of the public law board and greater  
10 emphasis would have been placed on the public law  
11 board looking at these prior incidents, prior employment  
12 records and to see that the public law board would  
13 consider what was behind those.

14 We have one, the incident of a false arrest  
15 which lead to a conviction but nonetheless led to a  
16 departmental trial and punishment. This was one of  
17 the items the public law board considered. When the  
18 public law board considered it all we know is that  
19 they had knowledge that a proceeding had been brought  
20 by the railroad against Mr. Maddaloni for a false  
21 arrest. Nothing went behind it. There is no evidence  
22 whatsoever that the public law board ever considered  
23 the fact that the man arrested by Mr. Maddaloni in  
24 the case was convicted.

25 There is notice that the public law board, for



1 instance, considered the wrongful appropriation of  
2 railroad property and what was behind that. And what  
3 was it, the inadvertent walking home with a laboratory  
4 key.

5 The public law board looks at the sentencing  
6 that the railroad meted out on the basis of those  
7 three trials, your Honor, they meted out punishment  
8 of 120 days suspension from employment. Now, 120 days  
9 is a third of a year and that is very severe. I know  
10 many attorneys would be mortified if they were barred  
11 from practice for 120 days for missing a calendar call.

12 It just seems to be that we are talking of an  
13 item of that general magnitude. There is no evidence  
14 whatsoever that the public law board had anything but  
15 what was merely said to them by the lawyer.

16 I cannot say that another public law board  
17 hearing on this is going to change the results, but  
18 at least it will give my client the opportunity of  
19 knowing that the public law board, that the impartial  
20 referee who is set up there to hear all the facts,  
21 is going to hear the facts which he wants them to hear,  
22 not just facts which a Union which has not contacted  
23 him, which at best has been very very aloof from him,  
24 and they presented those facts which the railroad has  
25 prepared in a nice dossier form and gone to the law

1 board virtually uncontested. Basically what we are  
2 asking for if we cannot have a trial which is our first  
3 request, is the fall back position that we ask a new  
4 public law board be established to hear the grievance.

5 THE COURT: I think I have indicated that is  
6 not the course which I believe to be possible or  
7 warranted on the law and facts.

8 MR. STOKES: The only thing in response to  
9 Mr. Koller I wanted to point out indicating about  
10 what he is talking about with reference to prior trials.

11 This would be similar, your Honor, to a criminal  
12 up before your Honor for sentencing claiming that  
13 prior convictions on his record were unfair convictions.

14 THE COURT: That is a good one because that  
15 issue came up repeatedly and still comes up wherever  
16 you have a higher penalty for a second and third  
17 offender and for first offenders and you can show that  
18 you pleaded guilty without adequate counsel and that  
19 can be knocked out from under and you cannot be sentenced  
20 on it.

21 MR. STOKES: As to the Railroad Labor Act, I  
22 do not know whether that is true.

23 THE COURT: What is unfolding in the Court's  
24 knowledge on that chronology is if there are misstate-  
25 ments and presentence reports which influence a



1 sentence that the sentence ought to be reduced and  
2 the man resentenced so that is something else again,  
3 well, that is the analogy.

4 MR. STOKES: What we had here was a man tried  
5 on the property and this 120 days on appeal was reduced  
6 substantially I believe to 45 days or 30 days, I  
7 forget what the exact figure was, but it was not 120  
8 days on appeal for the three offenses, it was reduced  
9 substantially to less than that.

10 No further appeal was taken from that. These  
11 trials were back in 1972, and no appeal was taken and  
12 in 1973 when he was brought up on another charge he  
13 wants to reopen the whole thing. That is trying to have  
14 several bites at the apple. He never did go further  
15 on those and all the arbitrator was doing was noting  
16 the record that he had been tried and these sentences  
17 had been imposed upon him. He did not go back and  
18 read the underlying record, but just he had the prior  
19 trials and these various disciplines assessed against  
20 him.

21 When we talk about 120 days for inadvertently  
22 taking a key home, that is not the actual sentence and  
23 we are talking not about a fool's arrest, but an off  
24 duty off property arrest which involved the company in  
25 substantial exposure to liability in the event of

1 false arrest. The men were under orders not to do this.  
2 This is what he was tried for, because of the exposure  
3 the company could have to an improper liability.

4 THE COURT: The man it seems was right.

5 MR. STOKES: The man did plead guilty to avoid  
6 getting --

7 THE COURT: He could make a citizen's arrest in  
8 those circumstances I suppose.

9 MR. STOKES: At any rate, the other point, your  
10 Honor, is that I am not sure that under the Railway  
11 Labor Act or Federal law that it is a federal cause of  
12 action against the union for breach of representation.  
13 I really have not looked at it but I think that may be  
14 an appropriate cause of action for a State Court.

15 I have not searched that point of view.

16 THE COURT: I think the Union can take care of  
17 itself.

18 MR. STOKES: I think the Union can respond to  
19 that.

20 MR. WOLF: I would simply say that what Mr. Stokes  
21 said, I do not think there is a cause of action here in  
22 the Federal courts under Federal law with respect to  
23 any impropriety on the part of the Union in dealing with  
24 one of its members here. As a matter of fact, sir, as  
25 I recall, Mr. Maddaloni did come to the Union on one



1 or two occasions aside from the fact of his disciplinary  
2 procedures involved he had other problems and he  
3 discussed it then with the people in the Union and he  
4 was aware of what was going on.

5 He also called the Union on several occasions  
6 to ask questions about, I believe, some medical bills  
7 that had to be paid to a hospital on behalf of his  
8 wife and at the same time he had a conversation with  
9 people at the Union office concerning this case.

10 So he was not in the dark as to what was  
11 happening or what was going on. Whether they responded  
12 to him by mail or not in response to his letters they  
13 nevertheless spoke with him.

14 THE COURT: I did not go beyond the record we  
15 have made here this morning.

16 MR. WOLF: I believe Mr. Maddaloni testified  
17 to that affect that he had spoken with people in the  
18 Union and on the phone and had visited the Union.

19 THE COURT: But not that he had any discussion  
20 along the lines he had suggested and requested in his  
21 letter of February 27, 1973.

22 Is there anything further gentlemen?

23 (Whereupon at 1:10 o'clock p.m. the hearing on  
24 the motion was concluded.)

25 \* \* \* \*

PLAINTIFF'S EXHIBIT 1

5 Juniper Court  
Coram, New York 11727  
March 14, 1973

Mr. Martin Greene, Pres.  
Local Union 803, I.B.T.  
62-17 Northern Blvd.  
Woodside, New York 11377

Dear Marty,

As I have not heard from you concerning my letter of February 27, 1973 I find it necessary to write to you again. I ask you to please contact me immediately in compliance to my requests in the above mentioned letter.

I am sending carbon copies of these letters to John so that he may assist me in any way possible.

Again thanking you in advance, I remain,

Very truly yours,

Stephen D. Maddaloni  
(516) 473-6506 or (516) 732-3379

CERTIFIED - RETURN RECEIPT

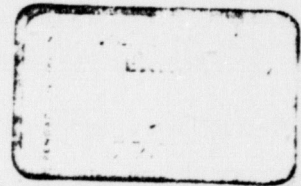
579338



PLAINTIFF'S EXHIBIT 2

Stephen D. Maddaloni  
5 Juniper Court  
Coram, New York 11727  
February 27, 1973

Mr. Martin Greene, Pres.  
Local Union 808, I.B.T.  
62-17 Northern Blvd.  
New York, New York 11377



Dear Marty,

In our conversation this date, you stated that a neutral board had been set up on my behalf. Due to the fact that the decision of this neutral will effect my entire life, I hereby inform you that I wish to be present at any and all hearings.

I also request that any and all briefs and all memorandums pertaining to my defense be made in duplicate and a copy sent to me, so that I may add anything that may be beneficial to my case.

I request that you notify me at least two days prior to any hearings of the exact time and location of such hearings so that I can make any necessary travel arrangements.

I also request that if at all possible a meeting be arranged at your convenience so that you and I may set up the best possible defense.

Of course it is understood that any travel arrangements to any location for myself will be paid at my own expense.

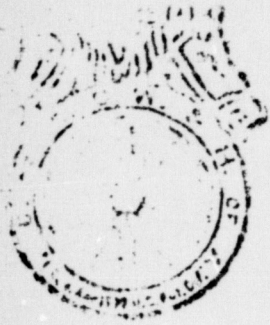
Thanking you in advance for your full cooperation with the above requests, I remain,

Very truly yours,

Stephen D. Maddaloni  
(516) 473-6506 or (516) 732-3379

REGISTERED- RETURN RECEIPT  
446113

## DEFENDANT'S EXHIBIT A

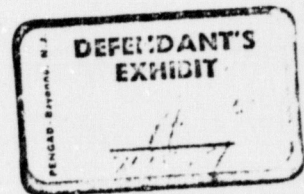


# INTERNATIONAL BROTHERHOOD OF TEAMSTERS • CHAUFFEURS • WAREHOUSEMEN & HELPERS OF AMERICA

42-17 NORTHERN BOULEVARD, WOODSIDE, N. Y. 11377 - Phone 274-5400

JOHN MAHONEY, Business Manager

Mr. S. M. Scudaloni  
5 Juniper Court  
Coram, New York 11377



Dear Sir:

Your appeal to the arbitrator has been set down for May 74, 1975 at 11:00 A.M. at the Holiday Inn of Reguardia.

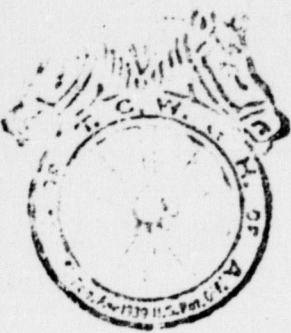
If you have any questions concerning the above, please contact this office.

Yours truly,

File

J. Mahoney  
President





257  
DEFENDANT'S EXHIBIT B  
**LOCAL UNION 608**

**INTERNATIONAL BROTHERHOOD  
OF  
TEAMSTERS • CHAUFFEURS • WAREHOUSEMEN & HELPERS  
OF AMERICA**

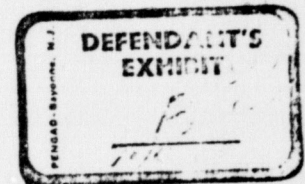
62-17 NORTHERN BOULEVARD, WOODSIDE, N. Y. 11377 - Phone 274-5000

JOHN MAHONEY, Business Manager

May 24, 1973

Mr. S. D. Maddaloni  
5 Juniper Court  
Coram, New York 11727

Dear Sir:



Your scheduled appeal for today, Thursday the 24th was postponed by the named arbitrator for reasons best known to him.

Your appeal is rescheduled for Thursday, May 31st at 11:00 A.M. at the Holiday Inn of Laguardia.

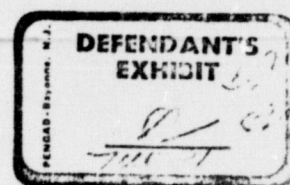
If you have any questions concerning the above please contact this office.

Yours truly,

*M. Greene*  
M. Greene  
President

MG:le

## DEFENDANT'S EXHIBIT C



Stephen D. Maddaloni  
5 Juniper Court  
Coram, New York 11727  
April 17, 1973

Mr. John Mahoney  
Business Manager  
Local Union 808, I.B.T.  
62-17 Northern Blvd.  
Woodside, New York 11377

Dear John,

Thank you for your letter of March 21 and the enclosed card.

On the front of the card it states that I must carry a receipt showing that my dues are up to date. If such a receipt is necessary as stated on the card, please send me one immediately.

Also, as I requested in my last letter, please notify me of a date on which I should pay my future dues each month.

Again thanking you for your cooperation, I remain,

Fraternally,

P.S. Please give me a progress report as to how Marty is coming along with the neutral. How does it appear the outcome will be? Approximately how long do you think it will take before we get a decision?

CERTIFIED MAIL



## MEMORANDUM AND ORDER FOR JUDGMENT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----  
STEPHEN D. MADDALONI,

Plaintiff,

-against-

LONG ISLAND RAILROAD,  
W.L.SCHLAGER, JR., LOCAL 808,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFERS, WAREHOUSEMEN  
and HELPERS OF AMERICA, M. GREENE:  
and JOHN MAHONEY,

Defendants.  
-----

FILED  
IN CLERK  
U. S. DISTRICT COURT

MAY 15 1974

TIME A.M. ....  
P.M. .... 74 C '81

MEMORANDUM  
and  
ORDER for  
JUDGMENT

M'FILMED

After hearing, at which it was found that plaintiff had received notices dated May 17, and May 24, 1973, from defendant Local 808 of the hearings before the Special Board of Adjustment under Section 3, Second, of the Railway Labor Act, as amended by Public Law 89-456, and it was decided that the Award No. 1 was, therefore, final as between plaintiff and the railroad and the railroad was entitled to judgment, but that it appeared that Local 808 had failed to consult or communicate with plaintiff as reasonably requested in the second and fourth paragraphs of plaintiff's letter of February 27, 1973, and that Local 808 is not entitled to summary judgment on the present papers, it is

ORDERED that the motion of the defendant Long Island

## MEMORANDUM AND ORDER FOR JUDGMENT

2.

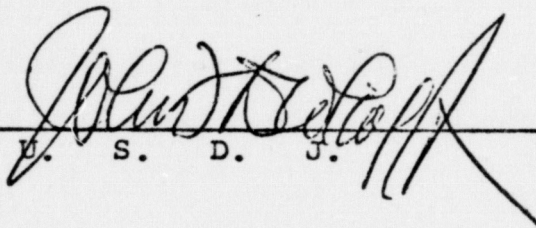
Railroad for summary judgment is granted and the motion of Local 808 for summary judgment is denied; and

IT APPEARING THAT there is no just reason for delay in entering final judgment as between plaintiff and the railroad, it is expressly

ORDERED that the Clerk now enter judgment that the plaintiff take nothing against the defendant the Long Island Railroad and that plaintiff's action against the defendant Long Island Railroad is dismissed on the merits without costs.

Brooklyn, New York

May 14, 1974.

  
U. S. D. J.



## JUDGMENT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
STEPHEN D. MADDALONI,

Plaintiff,

--against--

JUDGMENT

74 C 81

LONG ISLAND RAILROAD,  
W.L. SCHLAGER, JR., LOCAL 808,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFERS, WAREHOUSEMEN  
and HELPERS OF AMERICA, M. GREENE  
and JOHN MAHONEY,

Defendants.

-----x  
A memorandum and order for judgment of Honorable John F. Dooling, Jr., United States District Judge, having been filed on May 15, 1974, directing the Clerk to enter judgment granting defendant Long Island Railroad motion for summary judgment and denying the motion for summary judgment of defendant Local 808, International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, it is

ORDERED and ADJUDGED, there being no just reason for delay, that the motion for summary judgment of defendant Long Island Railroad is granted, and the motion for summary judgment of defendant Local 808 is denied, the plaintiff take nothing against defendant Long Island Railroad, and plaintiff's action against the Long Island Railroad is dismissed on the merits without costs.

Dated: Brooklyn, New York

May 15, 1974

*Lewis Orzel*  
Clerk

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
-----

STEPHEN D. MADDALONI,  
  
Plaintiff,

Civil Action  
No. 74 C 81

NOTICE OF APPEAL

- against -

LONG ISLAND RAILROAD, W.L. SCHLAGER, JR.,  
LOCAL 808 INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFERS, WAREHOUSEMEN and  
HELPERS OF AMERICA, M. GREENE and  
JOHN MAHONEY,

Defendants.  
-----

Notice is hereby given that STEPHEN D.  
MADDALONI, plaintiff above-named, hereby appeals to the  
United States Court of Appeals for the Second Circuit,  
from the judgment dated May 15, 1974 and entered on  
May 15, 1974, granting defendant, LONG ISLAND RAILROAD's  
motion for Summary Judgment as to defendant, LONG ISLAND  
RAILROAD.

DATED: New York, New York  
June 7, 1974

\_\_\_\_\_  
ALFRED F. KOLLER, JR.  
Attorney for Plaintiff  
845 Third Avenue  
New York, New York 10022  
(212) PLaza 3-8756



UNITED STATES COURT OF APPEALS, FOR THE SECOND CIRCUIT

376—Affidavit of Service by Mail

The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

STEPHEN D. MADDALONI,  
Plaintiff-Appellant,

v.

LONG ISLAND RAILROAD, W. L. SCHLAGER, JR., LOCAL 808,  
Teamsters, et al.

Defendants-Appellees.

AFFIDAVIT  
OF SERVICE  
BY MAIL

State of New York, County of New York, ss.:

N Harold Dudash, being duly sworn deposes and says that he is  
agent for Alfred F. Koller, Jr. the attorney  
for the above named Plaintiff-Appellant  
21 years of age, is not a party to the action and resides at 2530 Young Avenue, Bronx, N.Y. herein. That he is over

That on the 14th day of November, 1974, he served the within Appendix and Brief for Appellant


UPON:

George M. Onken, Attorney for Defendants-Appellees, Long Island Railroad and George  
Jamaica Station, Jamaica, N.Y. & Walter L. Schlager, Jr.  
Haskell L. Wolf, Attorney for Defendants-Appellees, Local 808, I.B.T., M. Greene &  
62-17 Northern Boulevard, Woodside, N.Y. 11377 John Mahoney,  
upon the attorneys for the parties and at the addresses as specified below  
three true copies of each

by depositing  
to each of the same securely enclosed in a post-paid wrapper in the Post Office regularly main-  
tained by the United States Government at  
90 Church Street, New York, New York  
directed to the said attorneys for the parties as listed above at the addresses aforementioned,

that being the addresses within the state designated by them for that purpose, or the places  
where they then kept offices between which places there then was and now is a regular com-  
munication by mail.

Sworn to before me, this 14th  
day of November, 1974

  
ROLAND W. JOHNSON  
Notary Public, State of New York  
No. 4507705  
Qualified in Delaware County  
Commission Expires March 30, 1975

